

INDIA AS A FEDERATION



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To
MY GURU
Prof. M. VENKATARANGAIYA
with
Reverence and Affection.



PREFACE

THIS book was written during the latter part of the year 1934 and completed soon after the publication of the Joint Committee Report. The text stands as it was originally written except for a few changes found necessary by the publication of the Government of India Act. Full references are given to the relevant sections of the Act in the footnotes.

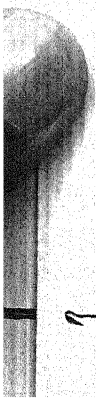
The book does not profess to give a complete picture of the new Indian Constitution. As its title indicates, its scope is limited to a study of the *federal elements* in that constitution.

Some knowledge of the general theory and practice of federalism is an essential preliminary to a clear understanding of the subject, but except incidentally, the author has not attempted to discuss these in the following pages. For a lucid and admirable exposition of the subject, the reader is referred to Prof. M. Venkatarangaiya's recently published book 'Federalism in Government.'

My thanks are due to my teacher, Prof. M. Venkatarangaiya whose kindness and guidance were of great help to me in the preparation of this book.

Waltair,
15th March, 1936.

K. V. PUNNAIAH



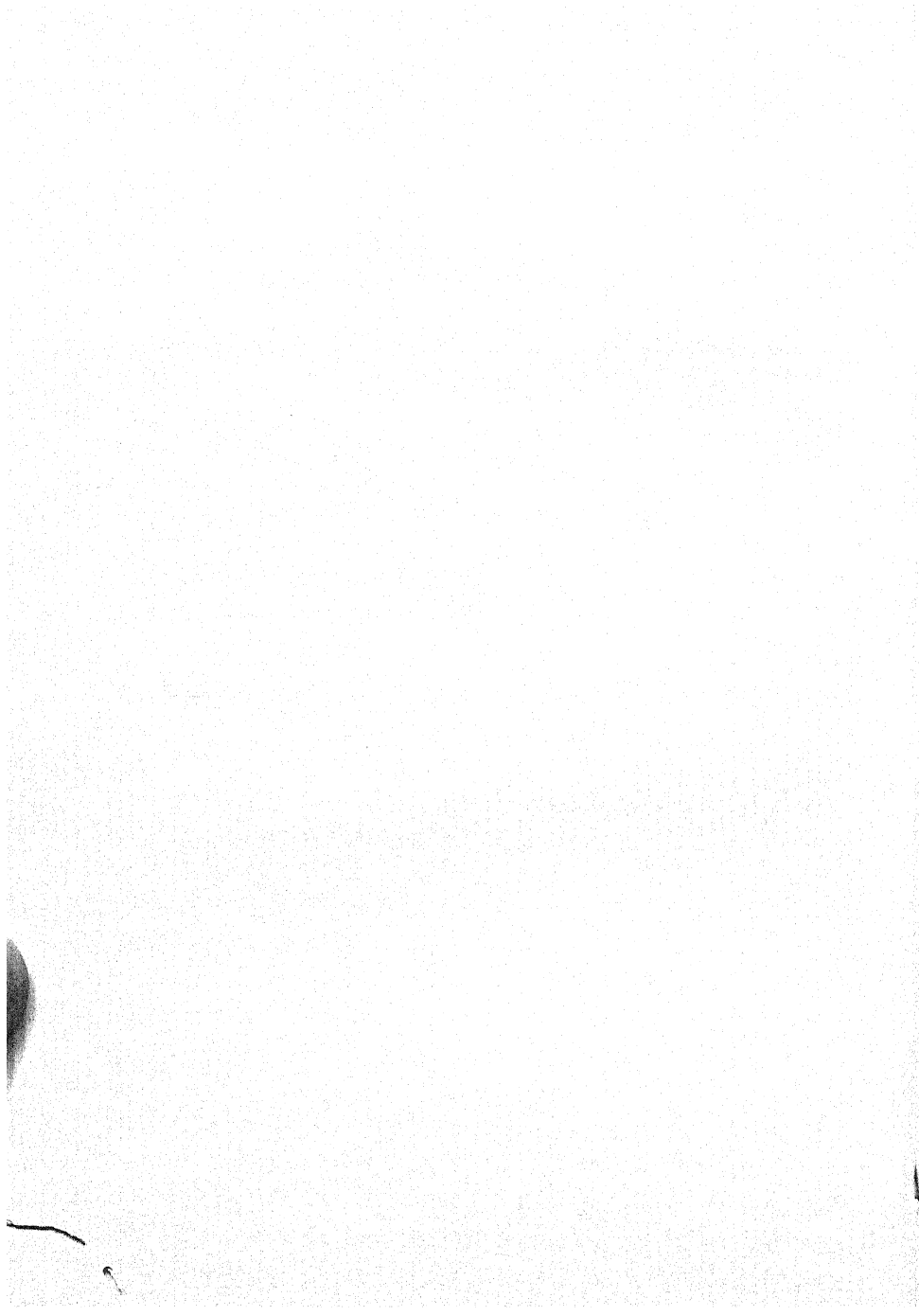
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PART I

**THE FORCES LEADING TO THE
FEDERATION**



INDIA AS A FEDERATION

CHAPTER I

PRELIMINARIES AND PREPARATIONS FOR THE ROUND TABLE CONFERENCE

‘Whatever be the story that is to be written of this conference, be assured a story *will* be written.’

—*The Prime Minister at the opening of the first R. T. C.*

I

THE development of Indian Nationhood is one of the benefits of British rule in India. Britain has unified the country by establishing her sway over the whole land from the Himalayas to Cape Comerin. She has knit the various parts of the country by an efficient bureaucratic system of administration and by the development of easy means of communication. Her connection has brought to us western ideas of liberty and equality. In this land of myriad languages, English has furnished the medium through which the educated classes from different parts of the country could understand one another in their effort to develop common interests.

Much of this development however is unconscious; it is implicit in the establishment of British Raj in India. It is against all human nature to expect that our rulers should have actively and consciously promoted the cause of Indian Nationalism—a cause born

out of the intense desire of the Indians to be masters in their own home. But the very presence of the British in India has a great negative effect which should never be underestimated. It has provided one great common interest for the people of India in their opposition to the continuance of this rule—a rule which signifies to her people economic exploitation of India for the benefit of Great Britain. No one in India is deceived by the declarations of the British statesmen that they view this development of Indian Nationalism with equanimity and sympathy.

India is now going through a difficult period of transition. Ideas of liberty and equality, once introduced in the political sphere, are having their repercussions in the social sphere also. In India, there is a two-fold social struggle at the present day. There is the social organization of the Hindus with its division into castes and sub-castes, the lower castes fighting for the recognition of their social and political equality with the higher castes. There is also the presence of rival religious creeds and communities—the Hindu, the Muslim, the Sikh, the Indian Christian and the European—the minority communities trying to safeguard their present privileged position and to secure increased power in the future constitution of India. The Hindu Society is dissolving itself into a number of classes, not organically connected as of old. Nor is there a sense of unity connecting the various communities of India. Thus Communalism is the cloud in the offing which is coming on as an obstacle in the path of Nationalism. The 'Harijan movement' now championed by Gandhiji has to be viewed in this perspective as part and parcel of the great Nationalist

Movement in India, as its object is to cure the Hindu social organization of a fell disease.

Britain has noted very early these weak points in the armoury of its adversary. Her policy has been informed with the desire to rally the conservative forces in India to her side. The fertile brain of Lord Curzon conceived the idea of a partition of Bengal which galvanized into a new life the slumbering passions and age-long rivalries between the Hindus and the Muslims. Lord Minto, a sportsman, followed up the game with a clearer vision. He tickled the vanity of the Indian Princes by calling them into consultation on the spread of anarchist conspiracies in India, and enhanced their dignity and self-respect by relaxing the tight control which Lord Curzon kept over them. He pulled the wires from behind the scenes to bring a Muslim deputation to wait upon him at the Viceregal Lodge and in his cautious reply to this 'Command performance' blandly accepted the principles of weightage and separate electorates for the representation of Muslims in the legislatures. This two-fold policy has been scrupulously followed by the British ever since. As the Indian Princes are opposed to democracy and the Muslims to majority rule, they find it a fine opportunity to exploit these fears in their own interest. And the Indian Federation is the result. In its two-fold aspect, territorial and communal, this has an irresistible attraction to British satesmen. It is a big safeguard for the continuance of British connection with India for all time to come, and a permanent way of 'cribbing and cabining' democratic Indian Nationalism within the four corners of the constitution.

The Indian Round Table Conference is thus seen to be a masterstroke of British diplomacy. The formation of the Indian Federation differs from the formation of other federations like Canada and Australia in the British Empire in two essential respects. First, Federation came in those countries after the grant of responsible government to the component parts, and as a corollary, after the relaxation of British control over many important matters such as defence and foreign trade; secondly, the people of the different provinces in Canada and of the States in Australia first of all came to an agreement among themselves on the form of Government and the essentials of the constitution without calling in the aid of Britain as an Umpire, and thereafter they only asked the British Parliament to give legal effect to their agreement in the form of a Statute. Great Britain was no party to their agreement. In the case of India, Federation is devised to fetter responsible government and to safeguard British interests. Britain is the predominant party in this transaction. She has been posing as an invaluable ally of the minority interests and they follow her lead. Through the method of the R. T. C., she has demonstrated to the world that there is no unity among the people of India and therefore her presence is still necessary there as a trustee of the inarticulate interests of the dumb millions of the people and as a referee to maintain law and order and to keep the rules of the game from being violated by the warring communities of that unhappy land. Necessarily, the communal problem occupied the larger part on the boards at the R. T. C. Mahatma Gandhi sounded a pathetic note in the Minorities Committee of the

Second R. T. C., which finds a ready response in the hearts of his countrymen as a correct diagnosis of the whole case. 'Causes of failure' to arrive at a satisfactory settlement of the Communal Problem, he pointed out, 'were inherent in the composition of the Indian Delegation. We are almost all not elected representatives of the parties or groups whom we are presumed to represent, we are here by the nomination of the Government. Nor are those whose presence was absolutely necessary for an agreed solution to be found here.' The Round Table Conference, in a word, was based upon the differences which divide the people from one another and not upon that 'spirit of community' which unites them into one nation—an apology for a national constituent Assembly and a travesty of the principle of self-determination !

II

The years between the close of the Great War and the first meeting of the Indian Round Table Conference in London in November 1930, are momentous in the history of India. There has come about during this period a tremendous change in the ideas and aspirations of the Indian people. As Begum Shah Nawaz told the Round Table Delegates: 'Things have moved and are moving at such a tremendous pace that we ourselves are startled. In the remote corners of India, in the out of the way places, you will find people, especially young boys and girls, talking of their national aspirations and of the freedom and liberty of their Motherland. There is such an awakening in the youth of the country, both in the rural and

urban areas, that it is not possible to check the growing desire, the increasing spirit, which animates them to form themselves into a nation worthy of the name.¹

This national awakening has been due primarily to two mighty forces. One was the Great War and the ideas which it sowed broadcast over the world. The other has been the Indian National Congress, that 'unofficial Parliament of India' which has been for years the symbol and expression of Indian nationalism, dominated through all this period by the magic personality of Mahatma Gandhi.

The pronouncements of British and American statesmen that the success of the Allies in the war meant the triumph of the ideas of Democracy and Self-determination found a fertile field in our country. The Announcement of August 1917 therefore met only with a mixed reception. The first part of the announcement which enunciated the goal of British policy as being the realisation of Responsible Government was welcomed by all shades of opinion, but the other parts which declared that this goal was to be reached by regular stages and the time and measure of each advance were to be determined by British Parliament were stoutly rejected by advanced political opinion in the country as contravening the above principles. The special session of the Indian National Congress, held at Bombay in 1918, showed which way the wind was blowing. 'This Congress declares that the people of India are fit for Responsible Government and repudiates the assumption to the

¹ First R. T. C. Proceedings. p. 114.

contrary contained in the Report on Indian Constitutional Reforms.' It pronounced the Reforms 'disappointing and unsatisfactory' and suggested important modifications to make them acceptable to the people of India. All departments with the exception of law and order in the Provinces, defence, foreign and political relations in the Centre, should at once be transferred to Ministers responsible to their respective legislatures, and a statutory guarantee should be given that full responsible government would be established in the Provinces within a period not exceeding six years and in the Centre not exceeding fifteen years. These resolutions were reaffirmed by the next two Congresses.

The years 1919—22 form the first phase of the Nationalist struggle. The Khilafat agitation, the uproarious opposition to the 'Rowlatt Bills' and the great economic unrest following in the wake of the war were all turned into one common reservoir of opposition to alien domination. The Government bungled and inaugurated a policy of repression which culminated in the tragedy of Jallianwala Bagh. General Dyer, without warning, opened fire upon a peaceful gathering of the people, not because he apprehended an outbreak, but because he wanted to make an example of it! The monstrous crawling order and other horrible outrages perpetrated on national self-respect under the martial law regime in the Punjab sent a thrill of horror throughout the country, and one and all united in a general condemnation of the policy of the Government.

So came the Non-Co-Operation movement in all its volume and intensity. It is a revolutionary move-

ment, a species of 'direct action' which has been the theme of much of the recent political theory of revolt, but without its accompaniment—violence. Mahatma Gandhi believes in non-violence as a creed, and many of his followers as the only expedient policy to adopt for an unarmed nation. The special session of the Congress which was convened at Calcutta in September, 1920, came to the conclusion that the only effectual means to vindicate national honour and to prevent a repetition of similar wrongs in future was the establishment of Swarajya and found that there was no course left open for the people but to adopt Gandhiji's policy of progressive non-violent non-co-operation to achieve the end. It called upon the people to surrender their titles and honorary offices, to boycott schools, law-courts and legislative councils; it placed the boycott of British goods and the propagation of *swadesi* in the very forefront of the whole programme. This resolution was re-affirmed by the Nagpur Congress in December, 1920, which laid special emphasis on the observance of the principle of non-violence in word and deed by the people as an essential preliminary to the enforcement of the further stages of non-co-operation—the withdrawal of Government servants from civil and military services and the refusal to pay taxes to the Government.

The zenith of the non-co-operation movement and of Government high-hardenedness was reached in January, 1922, when Guntur (in Andhra Desa) began the first no-tax campaign with rather inadequate preparation. Meanwhile Bardoli was being carefully prepared by Mahatma Gandhi for the purpose. Then came the tragedy of Chauri Chaura and disillusion-

ment. With true moral courage, Gandhiji recognised that the country was not yet ripe for the final stages of his non-violent Satyagraha. True to his creed and even against the clamour of some of his men that he was committing a political suicide, he arrested the movement in its full swing, and his own arrest and imprisonment soon after gave the knell to the movement.

In spite of its failure, the Non-Co-Operation movement did a great service to the cause of Nationalism. It has brought a great political awakening to the masses in the country. The doings and exploits of Mahatma Gandhi have become the favourite theme at village gatherings and have familiarised the people with the ideas of freedom and Nationalism. In its negative result, it has greatly damaged the prestige of the Government. In some places 'the whole basis of ordered government seemed to be on the point of disintegration. Defiance of authority became widespread—an extraordinary development in Indian districts where the power of Government had never been questioned within living memory.'¹

There soon came a change in the methods of opposition to the Government. Desabandhu Chitta Ranjan Das and Pandit Motilal Nehru formed a party of their own within the Congress and demanded that the Congress should enter the Reformed Councils with a view 'to mend or end' them. In their party manifesto, they declared that they were entering the councils to see that they were not exploited for anti-national purposes; and that they intended, when they were

¹ Simon Commission Report. Vol. i, p. 250.

elected, to present to the Government on behalf of the country 'the National Demand' for the recognition of the Nation's right to frame its own constitution. And if the Government were to refuse their demand, they would adopt 'a policy of uniform, continuous and consistent obstruction within the councils with a view to make Government through the councils impossible.' Thus the Swarajists entered the councils and secured the tardy recognition of the Congress for the change of policy.

It is interesting to note (in view of later events) that the Round Table Conference method of drafting the constitution was put before the country so early as 1924 by the leader of the Swarajists in the Assembly. In the great debate on constitutional advance initiated by the resolution of Mr. T. Rangachariar, Pandit Motilal Nehru moved an amendment suggesting the summoning of a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of the important minorities, the scheme of a constitution for the establishment of full responsible government in India; this scheme, after being placed before a newly elected Indian Legislature for its approval, was to be submitted to the British Parliament to be embodied in a statute. The debate showed clearly the trend of Indian public opinion. The official members were left utterly in the cold. 'Member after member emphasised the unanimity with which all sections of politically-minded India combined to demand immediate political advance.'¹ The Swarajist leaders laid great emphasis

¹ India in 1923-24. pp. 276-7.

on the recognition of the principle of self-determination, declaring that no one in India accepted the Preamble to the Government of India Act which made British Parliament the judges of the time and measure of India's constitutional advance. The amendment was passed by a large majority, all the elected members voting for the motion.

An outcome of the debate was the appointment of the Reforms Enquiry Committee, presided over by the Home Member, Sir Alexander Muddiman. It presented a majority report and a minority report.¹ The majority thought that it was too early to pronounce on the success or failure of dyarchy, but they suggested certain modifications in the rules to improve it. The minority who represented Indian public opinion declared that dyarchy was working 'creakily' and minor remedies might cure a creak or two, but would not produce any substantial results. They advised that a serious attempt should be made at an early date to put the constitution on a permanent basis, with provisions for automatic progress in the future so as to secure stability in the Government and willing co-operation of the people.

The Muddiman Committee Report came up for debate in the Legislative Assembly in September, 1925, on a resolution moved by Sir Alexander Muddiman for the acceptance of the principle underlying the

¹ The cleavage might have been expected from the very personnel of the committee. The majority consisted of Sir Alexander Muddiman, Sir Muhammad Shafi (then Law Member), the Maharaja of Burdwan, Sir Arthur Froom and Sir Henry Moncrieff Smith. The minority consisted of Sir Tej Bahadur Sapru, Sir Sivaswami Aiyar, Mr. Jinnah and Dr. Paranjpye.

Majority Report. Pandit Motilal Nehru moved an amendment to the resolution, almost similar to the one he had moved in 1924. He made a telling speech in its support. He pointed out that dyarchy as a political system was unknown to political experience, ancient or modern; that it was invented by speculative constitutionalists in their love for constitution-mongering; the authors however knew that this hybrid constitution contained in it great potentialities for friction. In effect, the Montford Report stated 'we give you an unworkable machine, and you must try to work it.' He threw down the gage to England, as he closed his speech amidst loud applause with this brilliant peroration: 'The history of the so-called Reforms is painful and depressing reading at present, but as it develops in the near future, it will, I am confident, furnish the brightest chapter to the chequered history of this land. The struggle for freedom once begun must sooner or later have its appointed end, and that end is no other than the achievement of the fullest freedom. It remains to be seen whether England will share the credit of the achievement by willingly giving a helping hand or suffer that achievement to be wrested from her unwilling hands. These are the only alternatives. It is for England to choose.'¹ This amendment also was carried against the Government by an overwhelming majority.

With 1927, we come upon the next stage in the movement. In the Madras Congress (1927), Pandit Jawaharlal Nehru moved a resolution declaring the goal of the Indian people to be complete national inde-

¹ Legislative Assembly Debates. 1925. Vol. vi, pp. 867-8.

pendence. At the same time, the boycott of the Simon Commission for a while furnished a common plank for all the parties in the country to unite. Out of a resolution of the Madras Congress too came the All-Parties Conference and the Nehru Report (1928). The Calcutta Congress of 1928, 'whilst adhering to the resolution relating to complete independence passed at the Madras Congress,' declared that it would adopt the Nehru Constitution in its entirety if it were accepted by the British Parliament on or before 31st December 1929, but in the event of its non-acceptance by that date, it would organise a non-violent non-co-operation and advise the country to refuse taxation.

The Viceroy, Lord Irwin, issued a declaration on 31st October, 1929. He there stated that the Simon Commission suggested to His Majesty's Government and the latter accepted the suggestion that after the publication of their Report and before its examination by the Joint Parliamentary Committee, they should call together a conference 'in which His Majesty's Government should meet representatives both of British India and of the States for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament.'¹ This cautiously-worded statement, beyond setting at rest certain doubts aroused in the minds of the people by a hair-splitting distinction made by Sir Malcolm Hailey in the debate of 1924 between Responsible Government and Dominion Status, did not involve

¹ India in 1929-30. Appendix II.

any commitment on the part of His Majesty's Government as to the *nature of the work* before the Round Table Conference—whether it was intended to be some sort of a constituent Assembly with power to draft a Dominion Constitution for India, (as was repeatedly desired by the Legislative Assembly in 1924 and 1925) or something much less than that. In the meeting on the 23rd of December between Lord Irwin, Mahatma Gandhi, Pandit Motilal Nehru and other political leaders, this point was put squarely before the Viceroy, and his inability to go beyond his published statement only deepened the distrust of the Congress leaders and made them suspect that the R. T. C. was in the nature of a political trap intended to catch the unwary.

A few days later, the Indian National Congress met at Lahore under the presidency of Pandit Jawaharlal. He sounded the keynote of the work which lay before the country when he said: 'We stand to-day for the fullest freedom of India. This Congress has not acknowledged and will not acknowledge the right of the British Parliament to dictate to us in any way. To it we make no appeal. But we do appeal to the Parliament and conscience of the world, and to them we shall demonstrate, I hope, that India submits no longer to any foreign domination.' Mahatma Gandhi moved the resolution that 'the Congress, having considered all that has since happened, and the result of the meeting between Mahatma Gandhi, Pandit Motilal Nehru and other leaders and the Viceroy, is of opinion that nothing is to be gained in the existing circumstances by the Congress being represented at the proposed Round Table Conference. This Congress,

therefore, in pursuance of the resolution passed at its session at Calcutta last year, declares that the word 'Swaraj' in Article One of the Congress Constitution shall mean complete independence.' The resolution called upon congressmen to abstain from participating in future elections and directed the present Congress members of the legislatures to resign their seats. It authorized the All-India Congress Committee, whenever it deemed fit, to launch upon a programme of civil disobedience including the non-payment of taxes. On 12th March, 1930, Mahatma Gandhi, armed with dictatorial powers by the Congress, began his historic march to Dandi to violate the salt laws.

It was in this tense atmosphere and under a clouded horizon that the Indian Round Table Conference began the first of a long course of deliberations at St. James' Palace in London.

CHAPTER II

BRITISH INDIA AND FEDERATION

‘The main problem of the Constitution of India is to provide a stable equilibrium for its centripetal and centrifugal forces.’

—*Haksar and Panikkar : Federal India, p. 5*

FEDERATIONS have been brought into existence by either of two processes: the coming together of a number of separate and independent units into a union for certain common purposes, or the loosening of the ties between different units, territorial and cultural, hitherto held together by a unitary government. The second process which is 'much the more interesting one has hitherto been only partially illustrated by the case of Canada. India now takes her place beside Canada as another interesting case.

Federation marks the state of stable equilibrium between certain centripetal and centrifugal forces. Both the forces must be operative, as otherwise no federation would result. Federations vary according as the one or the other is the stronger. There may be a number of stable equilibriums and so there are various types of federations.

The history of India may be viewed in this perspective. It shows the interplay of certain centripetal and centrifugal forces in its long course of centuries. The centrifugal forces on the whole won in the struggle before the establishment of British rule in India. We see the triumph of centripetal forces during the period of British occupation. And now we come to a

new stage in Indian history, indicated by that elusive word 'Swaraj,' standing for democratic nationalism and freedom from foreign domination. With the advent of this new period, the old centrifugal forces which lay dormant so long have come back to a new life. But the work of the British has not been in vain. The demand for federation in India is the demand to find a stable equilibrium for the satisfaction of both these forces.

The interaction of the centripetal and centrifugal forces in the ancient and medieval periods of Indian history is illustrated by the story of the rise and fall of empires—the Mauryan, the Gupta, the Mughal and the Mahratta. The centrifugal forces triumphed in the end. Many causes contributed to this state of affairs. One of them was the large extent of the country, the existence of physical barriers separating one part from another, and the lack of easy means of communication. Another cause was the strong local patriotism of what we may call the sub-nations who played an important part in different periods of Indian history and who left behind them a heritage of unfulfilled ambition. The Andhras, the Kalingas (the Uriyas), the descendants of the Cholas and the Cheras (the ancient Tamil Kingdoms of the South), the Rajputs, the Mahrattas and the Sikhs—to name only the more important of them—look back with pride on certain glorious periods in their annals and wish again to occupy an honourable and dignified place in the future history of their Motherland. A more important cause or complication than either of these was introduced on the establishment of Muslim rule in India. The religious differences between the rulers

and the ruled, the religious animosities engendered by long centuries of strife and persecution, have become another disruptive factor in Indian politics. The communal problem is the legacy of Muslim rule in India.

It is now our task to review and estimate the strength of these various forces.

The Trend of Political Development in British India

It is the good fortune of British India that she has now traditions of a strong unitary government. Before 1773, Calcutta, Bombay and Madras, the centres from which the power of the East India Company extended inland, were independent of one another, and each government was absolute within its limits, subject only to the distant and intermittent control of the Directors in London. The Regulating Act of 1773 took the first step in the direction of co-ordination of policy among them, when it entrusted the Governor-General of Bengal in Council with powers of superintendence over the other Presidencies in matters of war and peace. Pitt's India Act of 1784 extended this control. The process of unification went on until by the Act of 1833 the legislative and administrative centralization was completed. The development of communications by rail and the telegraph in the fifties brought the Provincial Governments nearer to the Central Government and made possible the exercise of a high degree of elaborate central control.

But soon the reverse process began to take shape and momentum. The practical means employed by

the Government of India in carrying into effect the powers vested in them by the Act of 1833 was by establishing a stringent control over Provincial finances. The defects of the system—the extravagance that it entailed, the lack of any connection between Provincial needs and the distribution of funds among the Provinces, the indifference and apathy of the Provincial Governments in the growth of revenue collected through their agency—all pointed the way to some sort of decentralization in finances and administration in the interests of efficiency. This was begun by Lord Mayo in 1870 and was continued by his successors, until in 1912 the system of 'Provincial financial settlements' was made permanent by Lord Hardinge's Government.

If we take our stand just on the eve of the Reforms of 1919, we find that the Provinces still represented merely administrative divisions in a larger whole, without any distinctive individuality or initiative of their own. There was, in the first place, no statutory demarcation of legislative spheres between the Centre and the Provinces. While the powers of the local legislatures were strictly territorial, the Government of India in its Legislative Council had power to make laws for the whole of British India. The Provincial Governments, even within their limited sphere, could not introduce any piece of legislation in their legislative councils without obtaining the previous sanction of the Government of India and the Secretary of State. The latter also controlled the course of provincial legislation by means of executive directions or 'instructions' requiring the passage of any laws they desired. In the administrative sphere

also, the Centre exercised a minute and meticulous control over them by means of elaborate codes of instructions, by appointing commissions of enquiry to make reports on particular subjects on the basis of which the Government of India issued resolutions or decisions laying down the 'general lines of policy for the guidance of Provincial Governments, and in many cases also by appointing inspecting officers to see how far these decisions were carried into effect. Nor was its control in the financial sphere any the less, in spite of much decentralization since 1870. Eventhough there was an attempt at demarcation between Provincial and Central sources of revenue, there was still a large number of 'divided heads,' viz., land revenue, stamps, excise, income tax and irrigation, which were shared between the Centre and the Provinces in specified proportions, and these afforded a strong motive and a good opportunity for the Centre to interfere even in petty details of Provincial administration. In the absence of independent and adequate sources of revenue, it goes without saying that the Provincial Governments had no independent powers of borrowing.

The Announcement of August 20, 1917, and the decision of the Joint Report to introduce the first steps of responsible government in the Provinces necessitated a change in the above system. The question of 'Provincial Autonomy' came to the fore as an important principle with the inauguration of the Montford Reforms.

What do we mean then by 'Provincial Autonomy'? It means freedom from external control within a limited sphere of government. In our country,

the term is used in two different connotations which are however closely connected as cause and effect. Sir Frederick Whyte tells us: 'Most Indian controversialists employ it to describe both the freedom of the provincial government from external control and the internal political condition of representative and responsible government. The true meaning of the word lies in the former interpretation.'¹ But we have to note however that the two meanings involved in the use of the term by Indian politicians have a great historical and constitutional significance. The control exercised by the Centre over the Provincial governments was necessitated by its own subordination to the Secretary of State and by the responsibility which that officer owed to Parliament for the good government of India.² Provincial autonomy—partial though it be—was a necessary corollary of the decision to introduce partial responsible government in the Provincial sphere. The significant connection between the two was clearly brought out in the Second Formula laid down by the authors of the Joint Report: 'The Provinces are the domain in which the earlier steps towards the progressive realization of responsible gov-

1 *India, a Federation?* p. 295. The Reforms Enquiry Committee also point out in their Report (para 46): 'No particular form of constitution whether in the central government or in the Provinces is a necessary implication of the term. In their own spheres, the constitution of the central government and of the Provincial governments may be autocratic or democratic and the Provincial governments may vary *inter se* as to their constitutions.'

2 'Among the reasons which have tended to the tightening of control has been the consciousness that while local governments were largely immune from popular criticism in India, both they and the Government of India themselves were accountable to Parliament.' M/C Report. p. 77.

ernment should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This *involves* at once giving the Provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.¹

Thus the Constitution of 1919 marks an advance in the relations of the Provincial Governments to the Government of India. It has made a division of subjects between the Centre and the Provinces. Two lists of subjects are drawn, one for the Centre and the other for the Provinces, any matters not thus enumerated being vested in the Centre. Thus in regard to the enumeration of 'two lists' as well as the allocation of the undistributed residue of power, the Indian constitution has followed the Canadian model. But the actual division itself is neither rigid nor definite as in a Federation. If any doubt arises as to whether a subject is Central or Provincial, it is the Governor-General (and not any court of law as in a Federation) that is the final deciding authority. The Provincial Legislature can legislate on any matter included in the list of Central subjects, if it is declared by the Governor-General in Council to be merely of a local and private nature within the Province, and the Central Legislature also can legislate on any Provincial subject, if the Governor-General gives his previous sanction to such encroachment. Then, even within the list of Provincial subjects, certain parts of them which require uni-

formity in legislation are made 'subject to legislation by the Indian Legislature,' and include a large variety of matters such as the borrowing and taxing powers of local self-governing bodies, infectious and contagious diseases of men, animals and plants, water-supplies and irrigation so far as they affect more than one Province, industrial matters, standards of weights and measures, control of news-papers, books and printing-presses. A clearer definition of powers therefore, as the Reforms Enquiry Committee have pointed out, is 'an essential preliminary to any scheme of provincial autonomy in India.'

The Central Government still has large powers of control over Provincial legislation. The Governor-General's power of issuing ordinances for any part of India, the exercise of his powers of assent, dissent and reservation of provincial bills, and 'the obligation of obtaining the Governor-General's previous sanction to all but a small category of provincial enactments,'¹ shows the need of legislative autonomy for the Provinces.

The Provinces are given separate and independent sources of revenue and the category of 'divided heads' was abolished. They have been granted powers of taxation within a limited field, and also powers of borrowing for certain definite purposes, subject however to the previous sanction of the Government of India or the Secretary of State. Here, as we shall see later, it is not so much the lack of independence as the inadequacy of their resources that has stood in the way of a greater realisation of Provincial autonomy.

¹ Simon Commission Report. Vol. i. p. 237.

Even this limited amount of autonomy has however to be qualified by yet another consideration. There is responsible government in the Provinces only in part, known as 'dyarchy.' The Provincial list of subjects is again divided for this purpose into 'Reserved' and 'Transferred'—the latter so-called because they are transferred or made over to the charge of Ministers responsible to the Provincial legislature. The 'Transferred' subjects include many 'nation-building activities' such as Local Self-Government, Public Health and Sanitation, Education, Public Works, Development of Industries, etc., without however a 'separate purse' to feed them. The more important subjects where the mistakes committed by inexperienced heads might lead to serious consequences, such as Law and Order, Finance, Land Revenue Administration, are 'reserved' for administration by the Governor and his executive council. With regard to the Transferred subjects alone has there been a devolution of authority. The Central Government still exercises its meticulous control over the Reserved Departments, and an undue influence over the Transferred Departments as well, since the latter, for various reasons, have become dependent on the former. It will thus be seen that it is only with the abolition of 'dyarchy' and the introduction of full responsible government in the Provinces, will there be, as a necessary corollary, real Provincial autonomy.

Thus the trend of political development in British India has been towards 'Provincial Autonomy,' and the idea of a Federation which has recently come into prominence is only an extension of this development.

*Muslim Demand for a Federation of
British India*

It has not as yet been sufficiently recognised by political thinkers that the communal problem in India relies for its strength on the same philosophy as the 'group theory' which has assumed so great an importance in recent political thought. Its affinity to Guild Socialism on its theoretical side is very close. Indian Federation is thus a social Federation—a Federation of communities. The 'territorial' federation has developed only as a part of this larger question. The communal problem in this two-fold aspect has an absorbing interest to the political philosopher as well as to the student of Federal politics.

The question of separate *versus* joint electorates is only an aspect of the question of group representation. Just as the group theorist says that a Parliament elected from territorial constituencies does not represent, and hence does not safeguard, the interests of groups, which have a life and personality of their own, and which therefore attract a deeper loyalty from the individual than even the state itself, so the communalist in India argues that only members elected by separate electorates can really represent the community's interests, and that the system of joint electorates even with reservation of seats is no guarantee that the representation would be genuine, as that would mean at its best nothing more than the nomination of minority representatives by the majority community.

The late Maulana Muhammad Ali explained the ideology behind Communalism in the following words

at the R. T. C.: "Many people in England ask us why this question of Hindu and Mussalman comes into politics and what it has to do with these things. I reply, 'it is a wrong conception of religion that you have, if you exclude politics from it. It is not dogma; it is not ritual; religion, to my mind, means the interpretation of life.' I have a culture, a polity, an outlook on life—a complete synthesis which is Islam. Where God commands, I am a Mussalman first, a Mussalman second, and a Mussalman last, and nothing but a Mussalman. If you ask me to enter into your empire or into your nation by leaving that synthesis, I will not do it."¹ The same idea is developed by Sir Muhammad Iqbal,² the prophet of Muslim Communalism. The lack of internal harmony, he argues, is perhaps due to the fact that 'we are unwilling to recognise that each group has a right to free development according to its own cultural traditions.' He idealises Communalism in these words: 'I love the communal group which is the source of my life and behaviour; and which has formed me what I am, by giving me its religion, its literature, its thought, its culture, and thereby recreating its whole past, as a living operative factor in my present consciousness.' He points out that this has been recognised even by the Nehru Committee, who argue that Communal Provinces need not be inconsistent with Nationalism, just as Nationalism itself need not be inconsistent with internationalism. Even the staunchest internationalist recognises that

¹ First R. T. C. Proceedings. p. 103.

² See his Presidential Address to the All-India Muslim League, 1930. Mitra's Annual Register. 1930. Vol. ii, pp. 337-9.

without the fullest development of national autonomy, it is not possible to create an international state. So also, the Indian Nationalist has to recognise that without the fullest cultural autonomy—and communalism in its better aspect is culture, it is extremely difficult to create a harmonious Indian Nation.

The idea of Communal Provinces thus is only a development of the idea behind separate or communal electorates. And if the Muslim Community is recognised 'as a distinct political entity,' Sir Muhammad Iqbal has no objection to territorial (i.e. joint) electorates. 'The Muslims of India' he says, 'can have no objection to purely territorial electorates, if Provinces are demarcated so as to secure comparatively homogeneous communities possessing linguistic, racial, cultural and religious unity.'

Apart from this general position, we have to take note that the Mussalman minority have certain hopes and fears which need satisfaction. The communal problem has assumed disproportionate importance in Indian politics since the introduction and *in consequence* of the Reforms. Maulana Muhammad Ali points out that from the days of Lord Rama down to the time of Lord Irwin, there has been only autocracy in India. 'I want you to realise,' he says, 'that for the first time you are introducing a big revolution into India; for the first time majority rule is to be introduced into India.'¹ How is this going to affect the interests and aspirations of the Mussalmans? He claims that the Mussalmans ruled over India from the

¹ First R. T. C. Proceedings. p. 104.

beginning of the eighth century to the middle of the nineteenth in one part or another, which is quite unique—'which no other community can claim in the same manner,' and he argues from this that 'those who have been usurping the control of the destinies of those called Hindus for so many thousands of years do not want that there should be any majority Indian or Hindu except that which they can control precisely as they have controlled the Hindus for thousands of years'—a laudable aspiration ! There is also a second point which must not be lost sight of. 'A very important result of that with which we have to deal to-day is the feeling created by the record of Muslim rule for so long, over so large a part of India. There is hardly a community that has not a real or an imaginary grievance against the old Muslim rulers and what we know of human nature elsewhere brings it home to us that even to-day there is a feeling of *revanche* harboured against the Mussalmans in the minds of some Hindus and some members of other communities which is not the case against any other community whether Sikh or Mahratta or Rajput. It is with this feeling that we must deal, and against which we must provide safeguards for the future when framing a constitution for an ideal Indian Government in which all would feel safe, equal and free.'¹

These two objects can be adequately secured by reconstructing the Indian Constitution on a federal basis. In the first place, the Muslims want to rule and that over the Hindus, as their ancestors did at one

¹ Letter to the Prime Minister from the late Maulana Muhammad Ali.
Appendix I to the Minorities Committee Report of the First R. T. C.

time, and this they can have in those provinces in which they are in a majority. It is fortunate for them, that while they are a minority in India taken as a whole, they form a majority of population in a certain number of provinces. They are in a small majority in the Punjab and Bengal—two of the Governors' Provinces (where the Reforms have been introduced). The Lucknow Pact (1916) which arranged the representation of Muslims and Hindus on an All-India basis, did not give them a majority of seats in these two legislatures. In the words of Maulana Muhammad Ali, the Lucknow Pact made a mistake for which 'the Mussalmans have now been crying their eyes out for the last fourteen years,' and *'it is to rectify these mistakes that the Round Table Conference is practically being held.'* The Muslims demand for themselves 'statutory elected majorities' in these two Provinces. Next, there are the Provinces of Baluchistan and the North West Frontier Province, wherein the Muslims have huge majorities, but to which the Reforms of 1919 were not applied. Therefore, the demand of the Muslims has been, since the inauguration of these Reforms, that they should be extended to those two Provinces, and the Muslim League has been accustomed to pass a resolution to that effect once every year. Then, it is also excellent policy in the interests of the Mussalmans to form or create as many new Provinces as they could, where they could rule over the Hindus. The Province of Sind happens to be one such and they can make out a clear case that it has unnaturally been tacked on to the Bombay Presidency. But then, if the Mussalmans want to rule in these Provinces, they should see that

the Provincial Governments' are completely emancipated from any control from the Centre, where the Hindus will be in a majority, if Swaraj is conceded to India. This can be secured by giving as many governmental powers as possible to the Provinces and by making it impossible for the Centre to invade this sphere. This leads them to the idea of a Federal Constitution for British India, with the residual authority vested in the Provinces and free from any possibility of amendment except with the concurrence of the Muslim Provinces. This idea of a Federation of Provinces was put forward by the Muslim League as early as 1924.

All these ideas came to be gradually developed and we find them fully expressed in what have come to be known as 'Jinnah's Fourteen Points.' The relevant parts are reproduced below:—

- (1) The form of the future constitution should be federal with residuary powers vested in the Provinces.
- (2) A uniform measure of autonomy should be granted to all provinces.
- (3) All legislatures of the country and all elected bodies should be constituted on the definite principle of adequate and effective representation of minorities, without reducing a majority in any Province to a minority or even to an equality.
- (4) A territorial redistribution that might at any time be necessary should not in any way affect Muslim majority in the Punjab, Bengal and the Frontier Province.

- (5) Sind should be separated from the Bombay Presidency.
- (6) Reforms should be introduced in the North West Frontier Province and Baluchistan on the same footing as in other Provinces.
- (7) No cabinet, either Central or Provincial, should be formed, without there being an adequate proportion of Muslim ministers.
- (8) No change should be made in the Constitution by the Central Legislature except with the concurrence of the States constituting the Indian Federation.

Thus, in the first place, the constitution of an Indian Federation satisfies the ambition of the Muslims to rule over the Hindus in certain Provinces. Secondly, it provides a safeguard of Muslim interests in other Provinces. Necessarily, therefore the idea of Federation has an irresistible attraction to the minds of the Muslim leaders. Sir Muhammad Shafi gave frank expression to these views at the R. T. C.: 'To my mind the Federal India of the future with the Central Government in the hands of the majority community, and the Provincial Governments in six out of the eight Governors' Provinces in the hands of the same community, the four Provinces in which the majority community will be in a minority and the minority community will be in a majority will in itself constitute a guarantee of good treatment by both the communities. To me this one picture as regards the future is the most fascinating and the most attractive, for to my mind this is the real solution, the per-

manent solution, of the Hindu-Muhammadan problem in India.¹

Federation has thus been found as the only effective solution of the Hindu-Muslim problem in British India, just as it was found to be the only solution of the English-French problem in Canada.

*Redistribution of Provinces on a linguistic
or Cultural basis*

We have seen that even under the unifying tendencies of British administration, the very extent of the country has necessitated a large degree of decentralization and that this tendency has been greatly accelerated by the introduction of responsible government in the Provinces. Secondly, we have also seen how this tendency towards 'Provincial Autonomy' has been strongly reinforced by the new idea of Federation, which has been found to be the only satisfactory solution of the communal problem. Now we proceed to consider how the question of the redistribution of Provinces on a rational basis has come into prominence with the introduction and in consequence of the Reforms, thus strengthening the centrifugal tendencies leading to a federal form of government and how the federal idea in its turn has given a new importance to the question.

We first meet with the idea in the 'Joint Address'² presented by certain Europeans and Indians to the authors of the Joint Report, who, while

¹ Proceedings of the Third Meeting of the Minorities Committee, First R. T. C. pp. 51-52.

² Curtis: *Dyarchy*, pp. 329-31.

rejecting their scheme, commented favourably on this part of it.¹ The Reforms Enquiry Committee, the Nehru Committee and the Simon Commission have also considered the question in their Reports. They all recognise that the present map of India with its division into Provinces was shaped by the accidents of history and the exigencies of administrative convenience at particular points of time. The history of the growth of the Presidencies in particular is of great interest in showing the haphazard manner in which Provinces were formed. 'Several of the Provinces present features rivalling in their heterogeneity India itself.' Peoples with distinct cultures of their own and with no natural affinities connecting each other are grouped together into a Province, with scant regard to their wishes. The Provinces are not only heterogeneous, but are unwieldy. Three of them, Madras, the United Provinces, and Bengal have each a population ranging from 46 to 50 millions. This did not matter much when the government was autocratic and centralized in character. But the size and shape of the Provinces are found unsuited to the new change denoted in their status by the term 'Provincial Autonomy' in its two-fold aspect. The Reforms Enquiry Committee remark how the difficulties in the working of responsible government are greatly enhanced by reason of the large size of the several provinces, their artificial and unnatural boundaries, and the want of homogeneity in their populations; and how this unnatural union between different peoples has fostered disruptive tendencies 'which have been a

¹ M[C] Report, pp. 157-9.

marked feature of the last four years.' They argue that for the success of responsible government, it is of the utmost importance that Provinces should be so re-constituted as to secure homogeneity in their composition.¹

There are other equally cogent reasons for the re-distribution of provinces on a linguistic basis. Language as a rule corresponds with some special variety of culture, traditions and literature, and governmental support and encouragement are quite essential for their preservation and development. There is no doubt that the present irrational grouping has caused much injury to the development of particular peoples and their cultures. The Uriyas and the Kanarese have complained often that on account of their dispersion among different provinces, they have met with step-motherly treatment from every one of them with the result that their languages have been mutilated, their cultures neglected and their traditions, literature and art have been completely forgotten.² The Andhras and the Tamils, with no affinities to each other in their languages and culture, have yet been yoked together within one Province, and each of them feel that a separate Province is necessary for the full development of their language, literature and culture.

There are however people who argue that the formation of Provinces on a linguistic basis weakens the sense of national unity, that the creation of these 'sub-nations' is of doubtful expediency in the interests of

¹ Reforms Enquiry Committee Report. pp. 50-51.

² Memorandum submitted to the Indian Statutory Commission by the Government of India. Vol. iv. p. 504.

the country as a whole. But it is to be considered whether the combination of irreconcilable elements in one Province against their will may not conduce to greater disunity. In such cases, the wishes of the people of the particular area have to be satisfied in the interests of the larger unity itself. If there is a strong desire or sentiment among the people of any particular area that they form one group or unit in having a separate culture of their own and that they should try to develop it, that itself should be taken as sufficient justification for their demand. It is only by the satisfaction of this sentiment by the grant of cultural autonomy to the group that we can build up the larger unity of Indian Nationhood, and Federalism is the political system which reconciles these two sentiments of national unity and cultural autonomy.

While the idea is theoretically sound, there are however some practical difficulties to the full and logical application of it. If we look at the map of India, we find that the Indian States are as heterogeneous in their composition as the Provinces themselves, and there are cultural affinities between the two, transcending their artificial political boundaries. A Kerala Province, for instance, is unthinkable without the inclusion of Travancore and Cochin. The constitution of a Kannada Province will be greatly facilitated by the inclusion of the greater part of Mysore, and of the Andhra Province by the inclusion of the Telugu-speaking areas in the Nizam's Dominions. But nothing short of a revolution (such as the one which swept over Germany in 1919) is likely to bring about any such salutary simplification of political boundaries.

But confining our attention to British India alone, we may note that financial considerations are most likely to be placed in the forefront as obstacles to the application of the principle. His Majesty's Government for once seem to have recognised the principle of self-determination in conceding the consideration of this question to the Central and Provincial Governments in India itself, while however keeping, through the Order in Council procedure, the last word in their own hands.¹ They know full well that the Federal Government would not be very forward in supporting the demand of a cultural area for a new Province, until it has satisfied itself that it would be self-supporting and would not entail any burdens on the Federal finances. With the constitution of Orissa and Sind as separate Provinces, there remain only Andhra and Karnataka for whom an equally strong case can be made out. But to accede to the demands of either would *involve* the consideration of the whole question of the redistribution of Provinces and necessitate the appointment of a Boundaries Commission to investigate it. There can be no doubt that this difficult question will have to be tackled by the Federal Government during the first decade of its working.

¹ The Government of India Act, 1935. Sec. 290.

CHAPTER III

THE INDIAN STATES AND FEDERATION

'We are prepared to federate so long as our internal autonomy is preserved and our present hardships are remedied. We, the Ruling Princes, are jealous of interference by others in our methods of government.'

—H. H. *The Maharaja of Nawanagar at the R. T. C.*

INDIA is one and indivisible. Nature has not divided her into British India and Indian States. These political divisions are purely arbitrary. There are no natural barriers separating the two. The Indian States do not differ from British India in their climate, people, languages and religions. The five hundred odd states, large and tiny, lie scattered, indiscriminately intermixed with British territories, over the whole continent. The development of communications by rail, road and telegraph has made India one economic unit and increased the economic interdependence of the parts upon one another. In the changing political, economic and social conditions, co-operation between the two parts is being increasingly felt as necessary in the interests of the whole country in such matters of common concern as defence and foreign relations, tariff regulation, monetary policy, the development of communications, industrial and social legislation. If these matters are to be administered economically and efficiently, it can only be through a single governmental organisation controlling the whole. It has long been recognised that some form of federal government has to be created, which

reconciles the 'dynastic particularism' and local autonomy of the Indian States with the larger interests of the country. The authors of the Joint Report, writing in 1918, visualised some such development in the future.¹ This has since become the ideal and aspiration of Indian Nationalism. Without an organic union between the Indian States and British India, there cannot be an Indian Nation worth the name. Hence the idea of a United States of India makes an effective appeal to the politically-minded classes both in British India and the Indian States. 'The golden day for our country will be when the Indian India and British India will link themselves for common purposes, thus forming themselves into a great nation.'²

*The Constitutional position of the Indian States in
the Composite Society called the
Indian Empire*

Before we enter into a study of the events and the motives of the chief parties leading to the federation, we must have a clear idea of the constitutional posi-

1 'Looking ahead to the future, we can picture India to ourselves only as presenting the external semblance of some form of 'federation.' The Provinces will ultimately become self-governing units held together by the central government which will deal solely with matters of common concern to all of them. But the matters common to the British Provinces are also to a great extent those in which the Native States are interested—defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs. The gradual concentration of the Government of India upon such matters will therefore make it easier for the States, while retaining the autonomy which they cherish in internal matters, to enter into closer association with the central government if they wish to do so.' MJC Report. p. 192.

² Begum Shah Nawaz. First R. T. C. Proceedings. Pp. 114-5.

tion of the Indian States in the composite society called the Indian Empire. There is a great divergence here between theory and fact, form and substance. The Indian Princes at one moment say that they are sovereign and autonomous (which the Provinces are not), having the honour of being linked with the Crown by means of Treaties of perpetual alliance and friendship; and the next moment they complain that this faithful ally has infringed their treaty rights, has decided *ex parte* issues of the greatest moment against them, has created and developed an arbitrary body of usage and political practice unknown to their treaties, with the result that they do not know where they really stand!¹ The explanation of this paradox lies in the very nature of Paramountcy—the method of control it has adopted has obscured the extent of that control, it struck at the substance without affecting the form.

The Indian States form parts of the Indian Empire. The relationship between the states and the Paramount Power is neither international, nor even contractual, based only on treaties, as Sir Leslie Scott argues. The relationship is constitutional. That means, there is a whole made up of inter-related parts—something of an organic relationship. The British Empire in India with the Crown at its head is the whole of which the Indian States and British India form parts. The relationship is not fixed, as it needs must be, if it is based only on treaties. It is an over-growing, ever-changing relationship, adapting itself to new

¹ See the Maharaja of Bikanir's Speech at the first R. T. C. Proceedings. Pp. 37-38.

conditions as they arise. In this, there is a place not only for legal principles, but conventions and usages.

While the Indian States form parts of the Indian Empire, yet they are not British territory and their subjects are not British subjects. In the making and execution of laws as well as in the administration of justice, the Indian Princes are the final authorities within their territories. They and their people are not subject to the legislative authority of the British Parliament or to the judicial power of the Privy Council, as is the case with the people of British India. The instrument of British control over the states is *political*, it acts on the *governments* of the states and never directly on their people. Political pressure and executive interference therefore are the distinguishing characteristics of Paramountcy. In theory, this power is to be exercised on rare occasions and only in the last resort. Hence that claim of the Indian States that they are 'sovereign.'

But what is the extent of the 'sovereignty' which they in fact possess? The substance is much more important than the form.

Even according to their own treaties, they have admittedly lost their external sovereignty. They cannot have diplomatic relations with any foreign power. Their subjects outside the limits of India are in the same position as British Indian subjects. They have to invoke the aid of the Paramount Power in the settlement of disputes even with neighbouring states. They have to carry on faithfully all international obligations entered into by the Paramount Power on behalf of the Indian Empire, as in the cases of extradition, suppression of the slave traffic etc. They are an

entity unknown to international law. They rely for their defence and protection on the Paramount Power.

But have they internal sovereignty even? The Paramount Power interferes in their internal affairs for various purposes—to settle disputed successions, to prevent dismemberment of the state in case of partition, to suppress internal rebellion, to prevent gross misrule, to suppress inhuman practices, to regulate minority administrations etc. As early as 1860, Lord Canning definitely laid down: 'The Government of India is not precluded from stepping in to set right such serious abuses in a native government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a native state when there shall be sufficient reason to do so. *Of this necessity the Governor-General is the sole judge* subject to the control of Parliament.' Lord Minto declared in his Udaipur speech—'In guaranteeing their internal independence and in undertaking their protection against external aggression, it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule.'

One may perhaps think that such intervention occurs only on rare occasions. But that is not so. 'It is comprehensive and pervading, it reduces to a shadow the authority of the ruler.'¹ The British Govern-

¹ Panikkar: *Relations of the Indian States with the Government of India*.
p. 108.

ment has a Resident stationed in each state, whose ostensible duty is to prevent mal-administration in the state and to see that the state carries out faithfully its obligations to the Paramount Power. But in fact, he is the *master*, the real sovereign in the state. M. Joseph Chailley, an acute and impartial observer, remarks that 'the attitude of the political officer, while ordinarily deferential in form (though even this is sometimes lacking), is the attitude of a servant who directs his nominal master, haughty, polite, impertinent and ironical.' The people of the state are not deceived by appearances. 'They know their rulers are thus subject to masters and their attitude takes colour from this.'¹ The Resident offers 'advice' to the ruler on any matter he deems important, and there is no limitation of sphere, except auto-limitation, in such matters of advice. And as 'advice' in Indian 'political' parlance is an euphemism for an order or command, it is needless to say that the Resident is a much more powerful personage than the Raja himself. The Political Department exerts its secret influence and exercises its invisible control in many other ways. It nominates Dewans or Chief Ministers with 'independent' powers to some states, and it lends the services of British officers to others, and these of course do the bidding of the Political Department. But this interference, sometimes good, but always unbearable, is veiled from the public eye, because the instrument of control is political and proceeds through secret channels.

¹ Joseph Chailley: *Problems of British India*. p. 259.

*The Controversy as to the location of
Paramountcy¹*

The series of events which lead to the formation of the Indian Federation start from the Reforms of 1919. Eventhough these have been introduced only in British India, the Indian States are immensely affected by the changes. This was foreseen by the authors of the Reforms; who wrote that the present stir in British India could not be a matter of indifference to the Princes, that the states could not be unaffected by constitutional developments in adjoining Provinces. 'Hopes and aspirations may overleap frontier lines like sparks across a street. There are in the Native States men of like minds to those who have been active in spreading new ideas in India . . . no one would be surprised if constitutional changes in British India quickened the pace in the Native States as well.'²

The introduction of democracy on their borders spelled destruction to the personal power of the Princes. It gave a rude shock to their fond hopes and beliefs in their divine right to rule or misrule their people according to their sweet will and pleasure. They have also a fear—and not an unjustified fear—that the people of British India may make common

¹ The arguments from the British Indian point of view are to be found in Sir Sivaswamy Aiyar's *Indian Constitutional Problems* pp. 210-14, the Nehru Report, and Prof. G. N. Singh's *Indian States and British India* Chap. II; the other side is presented in Sir Leslie Scott's letter to the *Law Quarterly Review*, June, 1928, the Butler Committee Report, and in Mr. Gundappa's *The States and their People in the Indian Constitution* Chap. VI.

² M|C Report. Pp. 100-1.

cause with their brethren on the other side of the imaginary border in their war against autocracy.¹ Many people more moderate in their political opinions than Mr. Jawaharlal have said: 'The Indian States cannot live apart from the rest of India, and their rulers must, unless they accept their inevitable limitations, go the way of others who thought like them.'² This roused the Princes to a lively sense of the danger of their position. They saw with alarm that their 'sovereignty' was being whittled away by the indefinite claims of the Paramount Power. If this power were to be transferred to the would-be Dominion Government in British India—as it must be, if the declarations of British statesmen would ever be fulfilled—their days of personal rule are certainly numbered. They therefore put forward the claim that their relations, from the beginning of their contact with the British, have always been with the British Crown, and the Government of India only as the representative and mouth-piece of that Crown, and therefore these relations should not be transferred to a future Dominion Government of British India.

1 'Ideas and opinion travel from one part of India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of the Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion, to their brethren on the other side of an imaginary line, will never make common cause with them.' Nehru Report. Pp. 71-72.

2 Jawaharlal's Presidential Address at the Lahore Congress, 1929.

This question has been of great importance to both British India and the Indian states, for the Paramountcy of the British Crown has hitherto formed the link which has bound both the parts together for common purposes. Paramountcy would not have been, what it has been, in its content and character, if it were not developed by a Government which controlled the whole of the Indian peninsula. This may be seen pointedly referred to, in the following speech of Lord Chelmsford to the Princes' Conference:

'There is no doubt that with the growth of new conditions and the unification of India under the British Power, political doctrines have constantly developed. In the case of extra-territorial jurisdiction, railway and telegraph construction, limitation of armaments, coinage, currency and opium policy and the administration of cantonments, to give some of the more salient instances, the relations between the states and the Imperial Government have been changed. *The change, however, has come about in the interests of India as a whole.*' So there is some truth, though not all the truth, in Sir Sivaswamy Aiyar's argument that it is with reference to the many points of contact with the Government of India and their relations with the Government of India that the Treaties with the Indian states were concluded, that the treaties impose obligations on the rulers for the time being of the Indian states in favour of *the authorities for the time being of the Government of India*, and therefore the Paramount Power is the Crown as the constitutional head of the Government of India. But the one weak point in the argument is the overlooking of the fact that in constitutional theory, the Government of India

has hitherto been a subordinate official branch of His Majesty's Government and that there is not yet a separate sovereign for British India other than the Crown of the United Kingdom. The correct attitude towards the whole question appears to be that if the Crown of the United Kingdom is going to relinquish its authority over India by creating a new sovereign there, it is but just that in the gain which will accrue to India, both the partners, British India and the Indian states who have hitherto been under its tutelage should now have a share. This can only come about by creating a federal form of government in India, in which both the states and British India will be represented.¹

The question of the location of paramountcy assumed an unprecedented importance on account of the consequences which the acceptance of either theory seemed to involve to the other party. Sir Leslie Scott has thus explained the consequences of the theory of direct relationship with the Crown: The British Government as Paramount Power has undertaken the defence of all the states and therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation. It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a dominion Government such as Canada or Australia; or even to British India. The continued

¹ This was also foreseen by the authors of the Joint Report: 'If the control of matters common to the whole of India is shared with some popular element in the government, it must be anticipated that these Rulers may wish to take a share in such control also.' MJC Report. p. 100.

presence of the Paramount Power in India will also be necessary for the working of that system of co-operation between the states and British India in matters of common concern such as communications, tariffs, health, irrigation, currency and many other subjects. It means, in a word, that it would be impossible for British India to attain Dominion Status. We have already seen what it means to the Princes if the other theory making the Dominion Government of British India the Paramount Power were accepted—it means the gradual disappearance of their personal rule under the ‘executive’ pressure of the Dominion.

Both the parties to the controversy recognised the necessity for a common governmental organization. They also realised that an All-India Federation is the only possible solution of the above difficulties. But each thought such a consummation in the immediate future as impossible. The states wanted a guarantee for the continuance of their autocratic forms of government, and British India demanded a modification of them, before either could agree to join in such a federation.¹

¹ ‘It would be, in our opinion, a most one-sided arrangement’ remark the Nehru Committee in their Report (p. 83) ‘if the Indian States desire to join the federation, so as to influence by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories.’

The Butler Committee's findings, strangely enough, are the first step on the way to Federation

That, under these circumstances, federation should have come so early as it has, is due to the diplomacy and statesmanship of the British Government who seem to have early made up their mind to make use of the states for their own purpose. We shall see how the Butler Committee's findings, criticised at the time as having divided the two parts of India for ever, are, strangely enough, the first step on the way to federation; how in fact events were so contrived that the question whether federation should come early or late depended entirely upon the decision of the British Government.

The policy of the British Government towards the Indian States since 1906 shows that it realised very early the value of the help of the Indian States in combating the democratic forces in British India.¹ The Paramount Power gave up its old policy of suspicion—the policy of subordinate isolation—and inaugurated a new policy of subordinate co-operation.

¹ This has been frankly admitted by Prof. Dodwell: 'The explanation (for this change of policy) lies less in any belated recognition of the Princes' rights than in the fact that political movements within British India itself were beginning to dispute the right and authority by which India was governed. Assailed by the intelligentsia, the Government looked round naturally for allies and helpers. In 1857, the Princes had in general aided to resist the tide of the mutiny. In 1907, they might aid to slacken the onslaught of political unrest. They were therefore to be cultivated rather than coerced. Seeing their rising value, the Princes raised their demands, but not too much, for they also were threatened by the same forces that the Government of India was seeking to dam back into constitutional channels. A new tendency had come into operation.'—The Cambridge History of India, Vol. VI. Pp. 506-7.

Lord Minto consulted the leading states on the spread of anarchist conspiracies. His schemes—which however did not fructify—first, for the setting up of an Imperial Advisory Council and later on, for an Imperial Council of Ruling Princes, came out of his appreciation of the value of associating the Princes in a consultative capacity with the Government of India. Lord Hardinge initiated the method of the Chiefs' Conference for the consideration of matters of common interest. This policy was systematised, when on the recommendation of the Montagu-Chelmsford Report, the Chamber of Princes was inaugurated in 1921, to consider questions 'which are of concern to the states as a whole or to British India and the states in common.'

In 1926 the Chamber of Princes discussed the question how the future reforms in British India would affect their states. In May, 1927, at a conference held at Simla, the Princes asked the Viceroy 'for the appointment of a special committee to examine the relationship existing between themselves and the Paramount Power, and to suggest means for securing effective consultation and co-operation between British India and the Indian States, and for the settlement of differences.'¹

The Committee were not required by their terms of reference to give an opinion on the question whether the Paramount Power was the British Crown or the Government of India.² It may be that they

¹ Butler Committee Report. Para. 2.

² 'It appears to me' says Prof. Nihal Singh in his *Indian States and British India* (p. 66) 'that the Committee was not justified at all in dis-

were of like mind with Sir Leslie Scott in thinking that an authoritative decision on the question was necessary since the political issues involved in it are of first-class importance to the future of India as a whole, since 'from an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire.' The Butler Committee agreed with the legal opinion of eminent counsel headed by Sir Leslie Scott 'that the relationship of the states to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties are of continuing and binding force as between the states which made them and the Crown.' They went on to refer to the great importance of the question to the Princes and to the really grave apprehension of them on this score, and gave it as their strong opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter should not be transferred without their agreement to a relationship with a new government in British India responsible to an Indian legislature. This opinion has produced a reassuring effect on the Princes with regard to their position. It also gave them an advantage in any possible negotiations for a closer union with British India. Unless their *special* claims are recognised, they may *refuse* to come into a closer union.

cussing the theory of direct relationship or in passing opinion thereon or recommending changes in the personnel of the Political Department and in the authority that should be in charge of the dealings with Indian States.'

But the object of this recommendation can only be understood properly, if we couple it with the opinion given by the Committee on the question of a precise definition of Paramountcy, also demanded by the Princes. The Butler Committee thought it was impossible to define Paramountcy, for 'conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any time raise unexpected situations. Paramountcy must remain paramount; it must fulfil its obligations defining or adapting to the shifting necessities of the time and progressive development of the states.' The states need have no fear on this score, for this very indefiniteness is the best safeguard of the interests of the states! Thus the 'veiled dictatorship' of the Political Department was consecrated. The above two conclusions thus are favourable to the British Crown.

There is yet a third category of questions—the financial and economic relations between British India and the states referred for consideration to the Committee. This part of their recommendations is not wholly favourable to the Princes. For instance, the Princes and their people complain that they are adversely affected by the indirect burdens imposed upon them by the protective policy adopted by the British Indian Legislature, professedly legislating only for British India, that their taxable capacity has thereby been greatly reduced, and that they are therefore entitled to some relief. The Butler Committee's answer to this contention is that every country has from its geographical position an inherent right to impose customs on its frontier, that not only British India but the maritime states have long been imposing such

duties without any objection or protest from the inland states, and therefore, on principle British India is fully entitled to impose customs duties for the purposes of India as a whole. It is only from the point of view of equity that their claim for some sort of relief can stand. But 'if the states are admitted to a share of the customs revenue of British India, British India may legitimately claim that the states should bear their full share of imperial burdens, on the well-established principle that those who share receipts should also share expenditure.' Similar is the tenour of their recommendations with regard to other items—railways, mints and coinage, salt, posts and telegraphs, etc. This clearly shows that the Indian Legislature has been legislating since at least 1921 on many matters which are of common concern to British India and the states, and the theory of direct relationship cannot therefore take away those matters from the purview of that body.

Now we see how the Butler Committee's recommendations are the first step on the road to federation. By the theory of direct relationship with the Crown, the states can perhaps put obstacles in the way of British India attaining Dominion Status. Possibly they may claim that defence can never be transferred to it. But British India can retaliate. The states cannot put forward a claim for a share of the customs revenue, profits of the railways, posts and telegraphs, salt monopoly, etc. It is only on *grounds of equity* that their claim for a share in these is generally admitted or allowed. Moreover, Paramountcy being where it is and as it is, they cannot claim a share in the determination of policy on any of these, even-

though they may sometimes be hard hit by them.¹ Thus British India needs closer union with the states in order to attain Dominion Status, and the states need closer union with British India if they want to raise their status and if they want to secure a voice in the determination of all-India questions. The point we have to grasp is that both the parties are gaining thereby (eventhough there is the further question whether each is sharing in the gain equally) by such a union. If anybody is losing, it is the British Crown and people, who are relinquishing their control over India. It is sometimes said—rather loosely—that the states by coming into a federal union with British India are impelled by patriotic motives, and that they are ‘surrendering’ part of their sovereignty to the common government. But, as we shall see hereafter, they are doing nothing of the sort. They are really gaining immensely by it. They are now having a voice in matters of common concern which they did not have before.

The R. T. C. and Federation

So, from the point of view of British statesmen, the situation has been well under control. It is generally said, both inside and outside the Round Table Conference that the sudden and dramatic declaration of the Princes to join in an All-India Federation has smoothed the way for the political progress of India, and in thus coming forward they have proved themselves true and patriotic sons of their Motherland. It is also said that even the Simon Commission visualised

¹ See Latthe: *Problems of Indian States*. Pp. 80-81.

Federation as some distant, far-off ideal, and it is the Princes' declaration which has made possible its realisation in the immediate future. This is however not an *exact* statement of facts. While not belittling in any way the part played by the Princes in the final denouement, we have to give greater credit to the British for the part they played in the development of the idea. We must not forget that it was the Simon Commission, who went out of their way, beyond their terms of reference, in discussing the position of the Indian States in relation to the next stage of the Reforms in British India, and it was again their Chairman, Sir John Simon who suggested to the Prime Minister the desirability (or the need) of calling representatives from British India and the states to a Round Table Conference for the settlement of the Indian problem. It is the British Government who wanted Federation for India as the next step in India's constitutional advance. The Announcement of August 1917 has committed them to a policy of granting Dominion Status to British India. The agitation of the people in British India has been rising to inconvenient dimensions. The Congress has been passing resolutions declaring complete independence (Purna Swaraj) as the goal of the Indian people. Boycott of British goods has been the chief plank in the nationalist propaganda. The Government is being assailed at inconvenient intervals by 'Satyagraha' campaigns led by that strange personality, Mahatma Gandhi. Responsible government cannot be withheld for any long period of time. But then, if there will be responsible government and if Congress will come to power, as of course it will, India may become another

Ireland and the extremist Jawaharlal may prove another De Valera. Therefore, the Indian States must be brought in as a bit to bait the future responsible government in India in its reckless career on towards independence, and the constitution should be so framed as to include sufficient internal safeguards against such unhappy consummation. The Minorities—whether it be the Muslims or the Indian States—would certainly look up to British connection as necessary for their security. The theory that the states are in direct relations with the Crown has strengthened the position of the British Government *vis-a-vis* the states. Pursuant on this policy, the R. T. C. was convened. The accession of the Princes to the Federation was made a condition precedent to the transfer of central responsibility to India. Of course, it was the Princes who said that they would not federate unless there was central responsibility. Colonel Haksar told the Conference that if the states wished to come into a federation, it was not to gain any exclusive advantage to themselves, but with the object of keeping the Empire whole and entire. ‘They do so out of their loyalty to the King-Emperor. They are once again doing for England what they did in 1857, namely coming to England’s rescue If the unitary form of government remains, I doubt very much if England will feel the confidence to concede to India all that India is asking. If the states come in, and there is a federal form of government, I am sure that that fact would inspire England with sufficient confidence to entrust to India the management of her own affairs.’¹

¹ First R. T. C. Proceedings. p. 179.

The Indian States have accepted the federal idea, impelled by a variety of motives. A very important one was their dread of democracy and their anxiety to get it effectually bridled. 'Their own instinct of self-preservation has determined for them the line they have chosen to adopt' says Sir Manubhai Mehta. 'Wisdom lies in seeing ahead, and if the tide of democracy is advancing, history has taught them that safety does not lie in standing across the fury of the rolling floods.'¹ In the report presented to the Standing Committee of the Chamber of Princes on their work at the R. T. C., he said 'Democracy and Autocracy, if brought together, have equal chances of diluting each other.'² The acceptance of the theory of direct relations with the Crown has dispelled all their former fears, and has made them think that the Paramount Power would protect them in their rights. They demand therefore that their relations with the Crown in all matters not 'surrendered' by them to the federation must continue as heretofore. They also insist that the future federation should have no concern with the forms of government in the states and even with the method of selecting their representatives to the Federal Legislature. The Indian Princes do not dispute the fact that in such matters they may be influenced by the development of political ideas and institutions beyond their frontiers, but these should be left exclusively to themselves, to be dealt with in their

¹ *Ibid.* p. 471.

² Mitra's Annual Register. 1933. Vol. I, p. 483.

own way and at their own time, free from all external influence.¹

The Indian states have everything to gain by entering the federation. We shall see in a later chapter how much they will be gaining thereby financially—either on account of the abolition of their tributes or the payment of compensations to them in lieu of ceded territories. But the most important gain is undoubtedly the great improvement which federation brings about in their constitutional position. At the present time, they are subject to the indefinite claims of Paramountcy. They are not represented on the executive authority which exercises these wide powers of control over them, nor is there any judicial machinery to decide disputes between state and state, and between a state and the Paramount Power. The Governor-General in Council is the final authority in all such cases. The complaint is that no justice can be expected if the judge is also a party to the dispute. Now by entering the federation, they are agreeing to transfer that part of the Paramountcy which has reference to matters of common interest to the whole country and over which they have hitherto no control, and such other portions of their power of a like nature 'which were most liable to risk from erosion' to an agency in which they will have an effective voice. They will also have the aid of the supreme court in the decision of cases between state and state, and state and Federation.

1 'That is our affair,' says the Maharaja of Bikanir. 'We know our states and our people . . . we shall know how and when to adjust our system to any changing conditions; but we will do it in our own time and in our own way, free from all external influence.' First R. T. C. Proceedings. p. 35.

Moreover, in the management of their internal affairs, they will be protected from interference by the federal government. So far, they get definiteness in their position and power. But there is still indefiniteness with regard to that part of the Paramountcy that will yet remain with the Crown. But the position here also may be improved. Now that an important portion of Paramountcy is transferred to the Federation, the Paramount Power can no longer invoke (as it used to do) the need of safeguarding all-India interests to justify its interference in the internal affairs of the states. And then with regard to that portion of Paramountcy which is exclusively concerned with the domestic affairs and internal autonomy of the states, the states expect to secure a large amount of relaxation. In entering the federation, they think that they are doing a great service to Great Britain. And in return, they demand that the present veiled dictatorship of the Political Department should be replaced by some better system. It would be impossible, they argue, for any Viceroy, however able he may be, amid all his grave pre-occupations, to give adequate personal attention to those questions affecting the states which come up for day-to-day decision, and therefore it would be absolutely necessary that some sort of a representative body, an Indian States council be established to advise and assist the Viceroy in this work.¹

We have now to see why and how far the people of British India have agreed to federate with auto-

¹ Cf. The Speech of His Highness, the Maharaja of Bikanir.
Ibid. p. 39.

cratic states. At the Round Table Conference (especially at the first session), two important sections of opinion were conspicuous by their absence. These were the representatives of the Congress and the representatives of the States' people. The Rulers claimed to represent the states in their own persons and the voice of their people was not allowed to be heard in the Conference. And as the Congress refused to participate in the Conference, the mantle of authority fell on the shoulders of the Liberals, who were therefore determined to get central responsibility at any cost. The British Government made it plain that the Paramountcy Powers over the Indian states in matters of common interest could not be made over to a responsible government in British India without the consent of the states themselves. They also made it plain that responsibility at the Centre could be granted only if the Indian States agreed to federate with British India. They thus enhanced the bargaining power of the Indian States. It all came to this that if they wanted to go back to India with the promise of central responsibility, the representatives of British India should agree to every claim put forward by the Indian States. Under these circumstances, the Liberal politicians are not very much to blame if they looked only at what was possible and practicable, and welcomed with open arms the entry of the states into the federation. Mr. Jayakar's speech at the conference indicates this attitude. He said that the states could not remain for long unaffected by the changes in British India, that it was impossible to conceive of a free British India without conceiving of free Indian States in the course of the next ten, fifteen, or twenty

years. 'We are content to wait, so that these slow processes may operate, and so that in the course of time Their Highnesses can think of an Assembly in their own territory and of handing over responsibility to their own subjects. That is a question of time. We are a very patient set of politicians in British India and we are content to wait.'¹

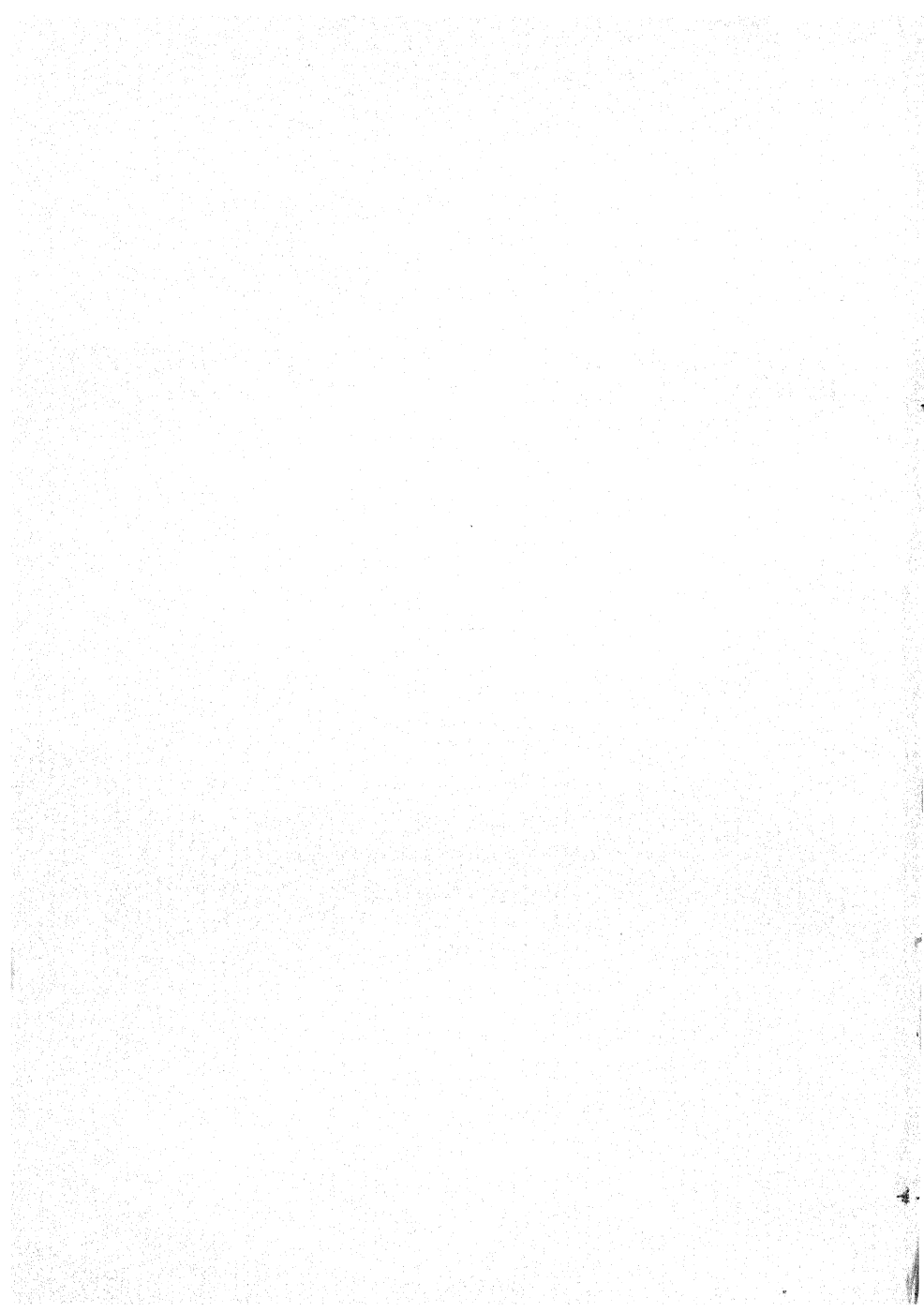
It augured well for the federal scheme that the only influential set of British Indian politicians at the Conference were the most patient set ever could be had, who could concentrate their attention on evolving an organisation for the administration of common subjects, and who could afford to wait and leave the internal administrations of Their Highnesses to the natural processes of time and to the slow working of those ideas 'which recognise no frontiers and admit no barriers.'

So everybody at the Conference blessed the scheme of federation as the only solution—and indeed the best possible solution—of India's constitutional problem, and congratulated themselves on inaugurating a new era—a golden age—in the constitutional history of India.

¹ First R. T. C. Proceedings. Pp. 44-45.

PART II

**DISTRIBUTION OF POWERS
AND FUNCTIONS**



CHAPTER IV

THE DIVISION OF POWERS BETWEEN THE CENTRE AND THE UNITS

'It is the first chapter in a very big new book, and we must accept the fact that, compared with other federations, there will be inherent in this federation a great many anomalies that we do not see elsewhere.'

—*Sir Samuel Hoare at the Federal Structure
Committee (1st Session) p. 89*

A FOREIGN student of federalism, unacquainted with the peculiar historical conditions of India, might find certain incongruities and anomalies in the Indian Federation. He would find a combination of the principles of the Canadian Federation and of the German Empire in one and the same system. He would see that in the distribution of powers between the Centre and the Provinces, the Indian Federation follows the Canadian model, whereas in that between the Federation and the Indian States, it imitates certain peculiar features in the constitution of the German Empire (1871-1918). He would perhaps say to himself that *a priori* a more unworkable federation could not have been devised by the ingenuity of man. After looking awhile and thinking, he would however conclude that, had there not been an agent of the British Government in India, leading a double life as Viceroy and Governor-General, and appearing as the *deus ex machina* on critical occasions to resolve deadlocks, the Indian Federation would have collapsed like a house of cards ere anybody knew of it.

But the Indian Federation has not imitated con-

sciously any of those models. It has whitewashed the old building with a few repairs here and there to make it suitable for habitation under the new conditions. The framers of the Indian constitution found it impossible to disregard the historical developments of more than a century and to refashion the whole structure anew. They had not a clean slate to write their ideas upon, and were forced to accommodate their constitutional theories to hard unyielding facts. We should not moreover forget that there were various parties to the new arrangement and the constitution that has been evolved is a compromise which reflects truly the relative strength of the parties to the bargain. The stronger parties felt, that so long as the old arrangements seemed comfortable to them, they should be continued. They simply stereotyped the existing conditions under a new guise with a new name, without taking much account of the fact whether these fitted in or not in the new structure they were raising. Some of the old facts do not square well with the new system, but they are nevertheless retained as part of the framework. The admixture of two incongruous elements to form a new compound has resulted in what are known as the anomalies of the Indian Federation.

*The Genesis of the Lists of Powers: Federal,
Provincial and Concurrent*

The Indian States have put forward claims for a privileged position in the Indian Federation. They say they are sovereign and are connected with the British Crown by treaties of alliance. Their territory is not British territory and their subjects are not Bri-

tish subjects. Their subjects owe loyalty only to their Princes. The legislative assemblies in them, where there are any, derive the limited authority they possess from their rulers. Their courts of law are final authorities for their territories, and there is no appeal from them to an outside authority like the Privy Council. The Paramount Power does not come into direct contact with their subjects in the discharge of any of the functions of government—legislation, administration or justice. And they want the recognition of the *status quo* within the framework of the future Indian Federation.

It is of course an entirely different matter that these rulers themselves are loyal subjects of His Majesty, and that the 'advice' of His Majesty's representative is in effect a command to them in the discharge of their governmental functions. But what have the British Indian politicians to do with this aspect of the matter? It is purely a domestic and personal concern of theirs, a matter between their suzerain and themselves only, an aspect of paramountcy which the British Indians have no business to talk about. So the Princes argue that the semi-sovereign status vouchsafed to them in law and theory should be accorded to them in the future Indian Federation, and they make it a *sine qua non* of their adhesion to the federal scheme. They do not want to surrender any more powers to the future Indian Federation than they have already 'lost' in the indefinite field of paramountcy. They want to 'surrender' or 'transfer' those subjects of common concern—and those subjects only—in the policy and administration of which they have hitherto no control, to a federal government in

which they can have an adequate voice and control hereafter. Beyond this, they refuse to move one step further, even if such would be in the interests of their Motherland for whose salvation, they say, they are entering the federation, 'sacrificing' a large part of their 'sovereignty.'

The British Indian Provinces, on the other hand, have hitherto been mere administrative divisions within a strong unitary government. The British Indian Government is as yet only a subordinate official branch of His Majesty's Government. The British Indian legislatures derive their power from Acts of the British Parliament. There is the right of appeal to the Privy Council from the highest courts in British India. The Reforms of 1919, as we have seen, have made a small breach in this system. The Provinces are being released from central control *pari passu* with the introduction of responsible government in them. Thus the trend of development in recent times has been towards Provincial Autonomy. This tendency is strengthened and accelerated by the demand of the Muslim minority for a federal form of government as a safeguard of their interests against the overwhelming Hindu majority in the Centre.

The fight between the staunch advocates of a strong central government and the uncompromising adherents of states' rights and provincial autonomy, so familiar in the history of the formation of other federations, has been fought over again in the debates of the Federal Structure Committee at the Round Table Conference. Lord Sankey, the Chairman, initiated the discussion on the allocation of powers, taking the existing lists of powers under the Devolu-

tion Rules of the 1919 Act. He divided the subjects into three categories—the federal subjects, the central subjects, and the provincial subjects. The ‘federal subjects’ are those in which both the Indian States and British India are interested. They are subjects which the Indian States would be willing to delegate to the Federal Government. The ‘Central subjects’ are those in which British India alone may be interested. They are not ‘federal’ because the Indian States do not agree to surrender their powers in relation to them to the central government. They are again not ‘provincial’ because legislation by a central authority in those subjects is necessary in the interests of uniformity for British India as a whole. Lord Sankey continued that the precise subjects allocated to the federal government differed in different federal constitutions, but taking the list of central subjects under the Devolution Rules, he thought there were few, if any, which would be excluded from the purview of the federal government under a normal federation. He therefore hoped that as a result of their discussions, the ‘central’ subjects might eventually disappear, being merged in the ‘federal’ list.

In the discussion that followed, the representatives of the Indian States made it clear that they were not willing to make ‘central’ subjects ‘federal.’ Colonel Haksar said it was difficult to anticipate what the future had in store for India, but so far as he knew the mind of the states at the time, it was clear they would not agree to make federal some subjects in the present list, such as civil law and civil procedure. His Highness of Bikanir declared that the Princes were determined to retain as much as possible

the autonomy that they enjoyed at the time. In regard to matters of common concern between the States and British India, they would like to limit the list to as few subjects as possible—to what were most absolutely necessary, and also to prescribe some rigid procedure of adding to them later on. The Princes had no wish to be levelled down from their position of internal sovereignty. They would indeed feel delighted if it was possible and feasible to level up others.

The Muslim group agreed with the Chairman that the 'central' subjects should ultimately disappear. Some of them might well be made federal and others provincial. If their Highnesses would not agree to make any of them federal, it would of course be best in the interests of all concerned, to make them provincial. Otherwise, this would create many complications. But their suggestion to make all subjects provincial was strenuously opposed by the Liberals. These held that British rule in India, whatever might have been its shortcomings, had at least one great achievement to its credit. It unified the country and secured uniformity in many important directions. And they declared they could not contemplate with equanimity the loss of this uniformity—this one beneficent legacy of British rule in India for over a century. To this, the Muslims agreed in principle. They however put forward a peculiar proposal by which they thought they could satisfy both the Indian Princes and their Liberal colleagues. Sir Muhammad Shafi, in his speech¹ on the 8th of December, 1930, declared that he was as anxious as his friends the Liberals were, to

¹ Federal Structure Committee Proceedings (First session) .Pp. 57-58.

preserve the uniformity that had been achieved in certain important matters such as civil and criminal law and judicial procedure. The Indian Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Indian Contracts Acts, the Indian Evidence Act etc., were the results of the monumental industry and enterprise of eminent jurists in the Legislative Department of the Government of India. Nobody would like to see this uniformity abrogated. Moreover, occasions might arise in future when similar uniformity would be highly desirable in regard to future laws. With these facts in his mind, Sir Muhammad Shafi put forward the suggestion for favourable consideration by their Highnesses that clauses similar to Sections 129 and 94 of the British North America Act might be adopted in the future Indian constitution. The former would preserve the uniformity in laws that had so far been attained, and the latter would secure similar uniformity in the case of all such future laws, without in the least impairing the sovereignty which their Highnesses valued so highly. According to his suggestion, 'The Federal parliament will have the power to enact laws where uniformity is essential for the whole of India, but those laws will come into operation in Indian States as well as in the provinces on enactments in the Indian States and in the provincial legislatures being passed conforming to those laws.' His Highness of Bikanir, who did not clearly perceive the drift of this speech through its legal quibbles, roundly declared that it was impossible to expect the Indian States to give up their sovereign rights of legislating on them. But the Liberal politicians, expert lawyers that they were, would not agree

to this proposal, as it left British Indian provinces in the same position as the Indian States with complete freedom and discretion whether to adopt or not, the normative legislation passed by the central legislature. What they wanted to visualise was a position where the provinces would be immediately bound by federal legislation, but where it is left to the states to adopt it or not as they might choose.¹

The next position taken up by the advocates of provincial autonomy is noteworthy. Mr. Jinnah pointed out that the Liberals seemed to think that uniformity or co-ordination could be secured only by central control in policy, legislation, and administration. But that was not at all necessary. It was possible to get co-ordination by giving powers to the provinces and then adopting machinery which would secure co-ordination among them. There were precedents for this in the working of other federations like Canada, Australia and the United States. All that was necessary was—there should be a central Board consisting of the Minister at the centre and Ministers from the provinces, who would chalk out a uniform line of policy. There is also precedent for this in our own country in the working of the present constitution. The Government of India has no control over the 'transferred subjects' in the provinces. But co-ordination of policy has nevertheless been secured in many of these matters such as education, agriculture and excise, by means of conferences of provincial ministers under the auspices of the central government.²

¹ *Ibid*: P. 87—Diwan Bahadur Ramaswami Mudaliyar's speech.

² *Ibid*: P. 96—Also see the Section on 'The co-ordinating power of the Centre' in the Simon Commission Report: Vol. I, Pp. 234-6.

The discussion revealed the different points of view of the Muslims and the Liberals with regard to the 'central' subjects. The whole position was summed up thus in a note which Mr. Lees-Smith, then temporarily presiding over the Committee, put forward: 'If examination shows that it is desirable to maintain in British India, besides the two classes over which the centre and the provinces are respectively to maintain exclusive jurisdiction, a third category of subjects *to fall normally in the provincial sphere, but to be subject to some arrangement for co-ordination of legislative policy*, we have then to decide what that arrangement is to be, and what subjects are to be regulated by it.' The note provisionally suggested a method. This was to give to the central legislature in those matters *concurrent powers of legislation*, with provision that when a provincial Act was inconsistent with a central Act, the latter should prevail and the former to the extent of that inconsistency should be invalid. If this method was to be followed, there would be three classes of subjects—(1) exclusively central, (2) exclusively provincial, and (3) primarily provincial, but centrally co-ordinated.

Thus, starting from the present distribution of powers between the centre and the provinces under the Devolution Rules, the Federal Structure Committee first discussed and demarcated the number of 'federal' subjects. These are to be found in the Appendix to its Interim report. Then they came to a provisional agreement on the question of the classification of subjects into federal, provincial and concurrent. After this, the lists were remitted for detailed examination to a committee presided over by Lord

Zetland, consisting of the representatives of the Federal Structure Sub-Committee and the Provincial Constitution Sub-Committee. This Joint Committee made its recommendations which are to be found in an appendix to the second report of the Federal Structure Committee. These were subjected to a careful examination by the experts at the India Office. And their lists (provisionally given in appendix VI to the White Paper Proposals) have in their turn been subjected to a careful scrutiny first by the Government of India and the Provincial Governments, and then by the Joint Committee on Indian Constitutional Reform; and as a result of all this labour have emerged the present lists in their final form.

*The Division of Legislative Powers between
The Federation and The Indian States*

Some eminent writers, looking from the point of view of the Indian States on their relations with the Government of India, have expressed the opinion that the relationship between the two partakes of a federal character.¹ The fundamental characteristic of federalism is the division of powers between the Centre and the parts. This is exactly what is to be found in the relations between the States and the Government of India. The States exercise a large measure of internal autonomy. In matters of common interest for the whole of India, the Government of India, as

¹ Panikkar: *Indian States and the Government of India*. Pp. 136-38, and Haksar and Panikkar: *Federal India*—Pp. 32-33. It is instructive to note that these writers always go for their analogies to the constitution of the German Empire (1871-1918).

the paramount power, has supreme control. But the federalism of the present Indian constitution is inchoate or embryonic. It does not find expression in any appropriate institutions. The States are not represented in the different organs of the central government. They have at present no voice in the determination of policy in regard to any of those matters of common concern. Nor is there any judicial machinery, as in a federation, to decide disputes between the States and the Central Government. On the other side, the Government of India, which exercises a kind of federal authority, does not possess, as a federal government does, any direct legislative, administrative or fiscal authority over the States. 'The Central government as vested in the Governor-General in Council has no powers of legislation which would, without the express enactment of the rulers, affect the subjects of the States.' So, according to these writers, all that is necessary to make the relationship truly federal is to devise appropriate institutions to safeguard the interests of the States.

This clearly brings out the attitude of the Indian States towards federation. They want that the existing distribution of powers between the Government of India and the States should not be disturbed even under the federation. They feel that there is no necessity to change it so long as it is satisfactory to themselves and to their position. As they are autonomous in all matters not taken over by the Government of India, there is of course, no need to enumerate their powers in the constitution. All those powers not given over to the federation are state powers. As in the case of the units in the United States, Australia and Ger-

many, the residual powers remain with them. It may be noted also that this method of division incidentally secures another advantage. The subjects thus made over by the states to the federation will in a way be concurrent (not exclusive, as we shall see they are, in relation to the provinces). They can make valid laws on them until the field is occupied by Federal Acts.

What is then, the *extent* of the powers which they wish to delegate to the Federal Government? The representatives of the Indian States at the first R. T. C. have agreed to make 'federal' for 'Policy and Legislation' some 45 items in the list of central subjects under the Devolution Rules. This list, with some modifications, is to be seen in items 1—47 of List I.¹ The Indian States' representatives make much of their surrendering a large part of their sovereignty. But the number of items need not deceive anybody into thinking that they go beyond what is most essential for a National Government in the interests of safety and uniformity for the whole of India.² If one takes the trouble to collate the Federal List of powers with those possessed by any or every federation of the present time, he would find that this list represents the irreducible minimum which every one of them has³

¹ For the lists of subjects, see Appendix I.

² Sir Akbar Hydari pointed out that even the 'Council of Greater India' recommended by the Simon Commission was intended to deal 'mainly and practically, I think completely, with all those heads and only those heads with which the All-India Federal Legislature will deal in future.' (Joint Parliamentary Committee Minutes of Evidence. Vol. II-A, Qs. 635-6).

³ In such a comparison, it is necessary to take into account not merely the actual lists of powers as are found in the various Federal constitutions, but those powers in conjunction with the developments that have taken place in regard to them, especially by means of judicial interpretation.

and indeed ought to have. The Federal List of powers comprises defence and foreign relations (items 1—3), financial powers (6, 44—47), the regulation of trade and commerce (19, 20, 26), the establishment of postal, telegraphic, telephone, wireless and other like services (7), patents and copyright (27), communications generally—railways, air navigation, shipping and navigation (20—25), currency and coinage (5), the incorporation and regulation of banking, insurance, trading and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State (33, 37, 38), Regulation of mines and development of industries within a limited sphere (34—36), negotiable instruments (28), emigration and immigration (17), extradition (3), Port quarantine and marine hospitals (18), census and statistics (16, 43). The items from 48 to 59 are separated from items 1 to 47 by a gap, so as to show that these are not accepted by the States as federal. So they are 'central subjects.' But they are placed in the list of Federal Subjects, because the framers of the constitution expect that, even though the states may not agree to make them federal in the beginning, they would do so in course of time. Even so, there are very important omissions in this List. Bankruptcy and insolvency, and the recognition throughout India of the laws, public Acts, records and judicial proceedings of the states and provinces are federal subjects in every federation known to us, and were indeed placed in this list as originally drawn up in the White Paper Proposals. But these are now transferred to the Concurrent List. Then, according to item (50), only

inter-provincial migration is included in the Federal List, but in the interests of uniformity, emigration and immigration between British India and the Indian States require to be made federal. There is again no provision to secure uniformity in the rights of citizenship throughout the federation. This is to some extent due to one of the component parts of the federation being autocratic in character. But there is of course no justification for the one-sided arrangement which allows an Indian State subject to stand for election to a provincial legislature, but which does not secure a similar right to the British Indian subject in an Indian State where a legislature exists.¹ Another important omission is the provision for the establishment of internal free trade throughout the federal area—a feature common to all federations. As many small states derive a large part of their revenue by imposing internal customs duties and as they cannot make both ends meet without that revenue, it has been found impossible to make any specific provision for it in the constitution. The Secretary of State assures us however that as far as it is possible this ideal will be constantly kept in mind in making the Instruments of Accession.² In some of the larger states, this right to levy these duties at their frontiers is specifically limited by treaty. But if ever there would be any danger of enhancement of them, the Joint Committee are of opinion that the powers entrusted to the

1 *Ibid*: Vol. II-B. Qs. 6519-21, 7673. The Secretary of State's reply was 'if we made it a condition that we should have these powers of interference and intervention in Indian States, we should not have an All-India Federation at all. No princes or no states would enter the federation.'

2 *Ibid*: Vol. II-B. Q. 6705.

Governor-General in his discretion would have to be brought to bear upon them.¹

We have seen above that the powers conceded by the Indian States to the Federation are the minimum which every federation has and ought to have at the present time. We may now look at these from a slightly different point of view. How far do these represent the 'surrender' of sovereign powers by the Indian States? One of the distinguished representatives of the Indian States said 'British India, if I may say so with all respect, has everything to gain, but the states are losing their sovereignty and are willingly surrendering it in certain respects.'² It is well to remember that this list is taken from the schedule of central subjects in the Devolution Rules, over which the British Indian Legislature has been legislating ever since the inauguration of the Montagu-Chelmsford Reforms. The Indian States have hitherto had no voice in their regulation, even though some of them (e.g. the tariff, the monetary policy) affect them and their subjects most intimately. So the states are not losing any sovereignty at all as they have been saying, but on the other hand they are gaining some powers which they do not possess at present. If we analyse the list of subjects from this point of view, we will find

¹ Joint Committee Report: para 264.

² H. H. The Maharaja of Bikanir in the Federal Structure Committee (first session) p. 17. This is in contrast with what was said by H. H. The Nawab of Bhopal only a little earlier: 'There is no question of our harping on our sovereignty at all; we are asking for what we consider to be our legitimate rights in any constitution. India as a whole and British India as a self-governing unit to-day has no real voice so far in such matters; they are asking for it and we are also asking for it; and so it is not a question of sovereignty but a question of how we may be able to govern ourselves consistently with our identity being preserved.'

that perhaps with a few exceptions (e.g. copyright and trade marks, census and statistics, negotiable instruments etc.), there is no 'surrender' at all in the real sense of the word. This is even admitted by Mr. Panikkar while giving evidence on behalf of the Chamber of Princes before the Joint Committee on the Indian Constitutional Reform.¹ He said that in reality, there was no transfer at all except to a very limited extent. This is clearly recognised in the procedure according to which the states are to come into the Federation. Federation cannot be brought about in their case, as it can be in the case of British India, by means of an Act of Parliament, because Parliament cannot legislate for their territories. Then, why should they not make arrangements for their entry directly with the Federal Government itself, as soon as it is set up in British India by an Act of Parliament? The obvious answer is that they are not sovereign, that as feudatories they have to be given (formal) permission to do so; but a more important rea-

¹ Vol. II-A. Q. 2310. Lord Rankeillour.

If you give over certain powers and responsibilities to the federal government, that would to some extent, relieve your own expenses, would it not, obviously?—Ans. Not of the subjects which are now handed over, because in most of those cases the administration already belongs to the Central Government of British India. Most of the subjects which you have now federated are under the administration of the Government of India to-day; so that except when administration is now with the states, the states themselves do not have any expenditure. Therefore, we are not saving any money by handing over these subjects to the federal government.

Q. 2311. Surely, there would be some subjects which you would be handing over, which would relieve you of the burden and the responsibility and at the same time of expense, would there not?—Ans. Very little.

The point was further elucidated by the questions put by Mr. Morgan Jones. 3117-3120.

son is that there is no meaning in such an act of theirs, since they in their own right' have no powers worth mentioning to make over to the Federation. Most of those powers which are to be made over to the Federation are really paramountcy powers which the Crown alone can transfer. It is conceivable that the Crown may first devolve those powers on the states, with permission to join the Federation. This method the British Crown does not like to follow for reasons of its own. All that the Paramount Power has conceded to the states is that it will take *their consent* before such a transfer. Thus, it has come about, that by means of the Instruments of Accession, the States first give their consent to the Crown for the transfer of its paramountcy powers to the Federation and thereupon the Crown makes that transfer.¹

We may now take up the consideration of certain anomalies connected with the allocation of powers between the Federation and the States. We have noted already the major anomaly which exists in the distribution of powers between the Federation and the States on the one side and the Federation and the Provinces on the other—that the extent of the power enjoyed by the Federation with regard to these of its components is not the same, that it exercises less power

¹ This is in a way admitted by Sir Akbar Hydari: 'There are certain powers in what will be in future the federal field which are at present exercised in Indian States by virtue of Paramountcy which, however, could not be transferred to a federation responsible to a legislature, without the crown transferring that portion with the consent of the state, and to that extent it will be the transfer of really certain paramountcy powers and not purely state powers.' Sir Samuel Hoare put emphasis on the transfer being made '*through the crown.*' Joint Committee Minutes of Evidence; Vol. II-B. Q. 6725.

over the States than it does over the Provinces. A minor anomaly of the same sort may exist as between the states themselves. In the first place, there is a possibility that some states may agree to federate with regard to all the subjects in their standard Federal List (items 1—47) and others only with certain exceptions. '*There must be some field for variation,*' says the Secretary of State; 'but what we want and what we should do our utmost to obtain is a *basic list of the important subjects* with which the states who enter the Federation would, *as a whole*, conform.'¹ There is again another possibility. These differences may not be confined to the *number* of subjects only. The *extent* of the powers which the states may wish to surrender to the Federation may vary from state to state.² The divergence in this regard may not be great if we confine our observation only to the legislative sphere. But if we take into consideration the totality of federal powers—legislative, administrative and financial—the anomaly assumes great importance. Many of these striking differences are to be seen in the financial sphere. We shall have to discuss later on the complications that have arisen due to the fact that certain states enjoy immunities and privileges with regard to certain federal sources of revenue, e.g. salt, sea customs and ports, coinage and currency, posts and telegraphs. All that we have to note in this place is that these states or at any rate a good many of these may not like to give up these 'sovereign' rights, sometimes for no more than sentimental reasons. Sir Akbar Hydari, for instance,

¹ Joint Committee Minutes of Evidence. Q. 7837.

² See the Government of India Act, 1935. Sec. 6 (2).

declared during the Round Table discussions, that the post office and currency were the two insignia of sovereignty which no Nizam would ever give up. The maritime states may not agree to give up their sovereign rights over the ports and the collection of customs in them for these and perhaps more solid reasons. These immunities and privileges enjoyed by some of the Indian States may be compared with similar privileges possessed by Bavaria, Wurtemberg and Baden in the German Empire of the pre-war period. But in the Indian Federation, it is recognised that these divergences should not be allowed to go beyond a certain limit in the interests of the proper and efficient working of the federation; to quote the authoritative opinion of the Joint Parliamentary Committee, 'these deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course.' The Secretary of State has declared again and again that the Crown has the right to insist on a minimum grant of powers being made by the states who wish to join the Federation; and that it has the discretion to refuse the application of a state for admission, if it attempts to make reservations that would make its entry of no value or not of sufficient value to the Federation.¹

As a corollary of the above position, it may be deduced that the extent of paramountcy may vary with regard to each state. The powers of paramountcy may be broadly divided into two categories—one that is claimed by the Government of India as the representative and custodian of the interests of the whole of

¹ *Ibid.* See Sec. 6 (4).

India, and the other domestic or personal, which is exercised by it in such matters as the regulation or recognition of succession, the suppression of rebellion and the prevention of misrule. The theory of direct relationship with the Crown has only been partially affected by the creation of the Federation. As we have seen, the greater part of the powers 'surrendered' or 'delegated' by the states to the Federation are really paramountcy powers, and therefore to the extent to which those paramountcy powers are transferred to the Federal Government, there is the limitation on the Paramountcy of the Crown over the states. As Lord Rankeillour put it wittily, the Crown's representative will have to lead a double life in India, as the Viceroy and the Governor-General. In his relations to the different states, according to the extent of the powers that they may surrender, the proportions of his divisible personality will be different. 'If a state surrenders a small extent of its powers, he might be one-fourth a Governor-General and three-fourths a Viceroy. If the state surrendered half its powers, he would be half a Viceroy and half a Governor-General. If the state did not accede, he would be a totalitarian Viceroy.'¹ Even if all the states joined the Federation transferring an equal amount of power in common affairs, we know that the Viceroy's paramountcy power over the internal matters of the state is not in the least diminished there-by.² As is the case in other federations such as the United States and Switzerland, the Indian Federal Government will have no

¹ Joint Committee Minutes of Evidence: Vol. II-B. Q. 6715.

² See also the Government of India Act, Sec. 285.

power to intervene in the internal affairs of the states in case of insurrection or serious disturbance. The Viceroy alone has that power, as the representative of the Paramount Power.¹ Again, if a State, which is a member of the Federation, has not transferred to it certain subjects or parts of subjects in the Federal List, the only way of arriving at a settlement between the two on any of those reserved subjects is by means of negotiation and eventual agreement. If no agreement can be arrived at, the relations between the State and the Federation must continue as if there were no federation, through the link provided by Paramountcy. Again, if some States only have joined and others have not, the old system must continue as between the latter and the Federation with the Viceroy as the connection link. This difficulty may not be serious, as according to one of the conditions laid down by the Secretary of State, there will be no federation at all unless the rulers of states representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the states in the federal upper house joined in the very beginning.² He also hopes that in course of time *all* the Indian States will join the Federation. This is extremely likely, as every state has something to gain financially by entering the Federation. Then, as to the differing extent of the paramountcy power to be exercised by the Viceroy even over the states who have joined the Federation, we have to say that this difficulty is more imaginary than real. As we have seen before, the Crown has the

¹ *Ibid.* Sec. 286.

² *Ibid.* Sec. 5 (2).

power to insist that every state must concede a minimum quantum of powers before it is allowed to join the Federation. So the extent of the paramountcy powers exercised by the Viceroy with regard to each state will vary only within certain narrow limits, and not so widely, as the above quotation from Lord Randeillour's question may appear to suggest.

*The Division of Legislative Powers between
the Federation and the Provinces*

The question of the division of powers between the Centre and the Provinces was obscured in the beginning by the controversy as to the location of the residuary powers in the future federation. The Muslims, as strong advocates of a large measure of provincial autonomy, demanded that the residual authority should be vested in the provinces. On the other hand, the Liberal politicians showed that the unitary government of British India was being split up in order to be refashioned into a federation, and in this there was close resemblance between India and Canada, and therefore the residual power should be placed in the central government as in the case of Canada. Both were under the misapprehension that the Government possessing residual powers would be relatively the stronger and the more powerful one. But is this really the case? In the constitution of the German Reich, the residual powers are vested in the states (landër), but the powers of the Reich are so exhaustively enumerated that very few powers indeed are left to the units. To take another case, as every one knows, Canada and Australia follow diametrically opposite principles in the distribution of powers. But

in practice, the Provinces of Canada are no less 'sovereign' or 'autonomous' in the 'extent' of power enjoyed by them than the States in Australia. And conversely, the Commonwealth Government of Australia, even though it is one of enumerated powers, has its powers so expanded by the liberal interpretation put upon them by the courts of law, that it is as strong as the Dominion Government of Canada, and is even more powerful than that Government in the extent of its enumerated powers.¹

This was recognised during the discussions in the Federal Structure Committee. So they started on the question from a practical point of view by demarcating the powers of each by a precise and exhaustive enumeration. A careful examination convinced them that exhaustive as was their enumeration, there might still be left some undistributed residue of power. Some details might possibly escape the attention of the framers of the constitution. Again, they could not be expected to foresee all the future contingencies that might arise and provide for them beforehand. With a change in the economic and social conditions, greater intervention of the government might be demanded in certain spheres, and in this sense government might acquire new and unforeseen powers. The Fathers of the American Constitution gave to the Federal Government all those powers they considered necessary for it under the conditions prevailing in 1787. But that distribution does not square well with the facts of the

¹ For a lucid explanation of the whole question, see Prof. M. Venkatarangaiya's article on 'Residuary Powers in a Federal State.' *Triveni*, Nov.—Dec., 1932; and for a more technical presentation of it, his *Federalism in Government*. Chap. VI.

twentieth century government, in spite of the great expansion given to them by a liberal judicial interpretation. So, the framers of the Indian constitution saw the necessity to make some arrangement for the allocation of the undistributed residue of power, small though it might be, which would meet with the approval of all the parties concerned. As it has not been found possible to enumerate all powers of a local or private character, it was originally proposed in the White Paper that the provinces might be given a general power of legislation in any matter of a merely local or private nature in the province, not specifically included in the exclusively Provincial List, and also not conflicting with any of the enumerated powers in the other two lists. This is the case also with the provinces in Canada, who possess a general exclusive power over non-enumerated matters of a purely local or private nature. But the experience of Canada has shown that a certain subject which in its inception may be of local interest only, may subsequently assume an extra-provincial or national importance. To meet with such cases, it was also proposed therein that, with the previous sanction of the Governor-General given at his discretion, the Federal Legislature should have the authority to legislate on the same subject. Thus the intention of the framers of the constitution with regard to the undistributed residue of power was that in all matters of local importance the Provincial Legislature and in all matters of national concern the Federal Legislature should have power to legislate. But as this proposal is far too technical and cumbrous, opening a way to unnecessary litigation, it has been thought that the same purpose can be equally

well secured by the simpler and more general provision authorizing the Governor-General in his discretion to empower (as the need arises) the appropriate legislature, Federal or Provincial, to legislate on any 'residual' subject (i.e. a subject not enumerated in any of the three lists).¹

The necessity to find a satisfactory settlement on the question of the residuary powers has been responsible for a two-fold classification of subjects into 'exclusively federal' and 'exclusively provincial,' as in the case of Canada. There are many difficulties involved in this procedure. Every law passed by a legislature under this method of division must fulfil two conditions. It must not only fall within the list of powers given to it, but it must not in any way affect any subject in the other list. In Canada, the list of powers are not scientifically drawn, and hence there is much overlapping between the two lists. And to meet the difficulty of a conflict of authority arising out of this overlapping of the subjects in the two lists, it has been provided in the Canadian constitution that pre-eminence should be given in such a case to the Dominion Parliament, so long as it kept itself strictly within the domain of its enumerated powers. Even so, there has been a large volume of litigation on questions of *ultra vires* in that country. This defect of the Canadian constitution is avoided to a very large extent in the case of the Indian Federation by a more careful enumeration of powers in the two lists. To meet however any possible cases of overlapping as

¹ White Paper Proposal 115; The Government of India Act. Sec. 104.

may have escaped the vigilance of the experts at the India Office, the Joint Committee have recommended the inclusion in the constitution of a provision similar to that in the Canadian constitution giving pre-eminence to federal laws on the subjects in Lists I and III in case of a conflict between either of them and the exclusively Provincial List (List II).¹

We have also to note that the overlapping of the subjects in the lists in the Canadian constitution has been caused to some extent by its refusal to recognise any concurrent field.² The Committee on the Division of Legislative Powers (at the third session of the R. T. C.) recognise that it is not humanly possible so to define and separate all subjects of potential legislation as to secure that every conceivable subject will fall within the *exclusive* jurisdiction of either the Centre or the Provinces. There are certain subjects which dovetail into one another — which are interdependent. Therefore by providing for a concurrent field of power, the Indian constitution has avoided another defect of the Canadian constitution.

With the above general principles in mind, we may now proceed to study the three lists of subjects given in the Seventh Schedule to the Government of India Act. We may start again with our original

1 Joint Committee Report: para. 232; The Government of India Act. Secs. 100, 107 (1).

2 'Confusion has perhaps been caused by the British North America Act refusing to recognise, except in the case of agriculture and immigration, concurrent powers in the Dominion Parliament and Provincial Legislatures; but inasmuch as subjects, which, in one aspect and for one purpose, fall within one section of the Act, may, in another aspect and for another purpose, fall within the other, the existence of concurrent authorities has not in fact been prevented.' Egerton: *Federations and Unions within the British Empire*. p. 151 note.

classification of subjects into 'federal,' 'central,' and 'provincial.' We have already seen that with regard to items 1—47 in the Federal List, the Federal Legislature exercises almost equal powers over the states and the provinces. There is also no difficulty with regard to the subjects in the provincial list. But we see the curious fact that the 'central' subjects are divided between two lists (items 48—59 in List I, and List III). Why has this been done?

With regard to items 48—59, there is again not much difficulty. They are included in the exclusively Federal List because, while they are not matters of such urgent importance as those of the 'Standard' List (items 1—47), yet from the point of view of uniformity and the convenience resulting therefrom to all concerned, they are of sufficient importance to be made federal at some time in future. It is expected by the framers of the List that the states would accede to them in course of time so that there will be no distinction whatsoever between the 'federal' and the 'central' subjects so far as List I is concerned.

All the more important 'central' subjects are placed in the Concurrent List and that for a variety of reasons. These subjects may be divided into two main categories—civil law, criminal law and judicial procedure; and labour legislation. The experience of the federal constitutions shows the need of uniformity in these matters under modern conditions. The lack of power to the Federal Government with regard to the first category of subjects in the United States and Australia, and with regard to the second category of subjects in the case of the United States and Canada and to some extent also Australia (where the Federal

Government possesses very insufficient power) has led to many difficulties and much dissatisfaction in those countries. In the Swiss and the German constitutions, all these powers are possessed by the Federal Government. The British Indian Provinces have felt the need of uniformity in these matters, and it would have been well, in view of the above experience, if the Indian States have agreed to make these subjects federal. But they are not willing to do so. It is possible that the states may voluntarily copy British Indian legislation in these matters in future as they have done in the past. There is again no bar against any state accepting this list or some subjects in this list, if it wishes to do so. But the assumption that there is no hope in the future of the states ever acceding to this list has been one of the causes for separating this from the list of 'central' subjects in List I (items 48—59).

There are other and more important causes for this differentiation. Under the Devolution Rules, civil law and civil procedure and criminal law and criminal procedure are central subjects. But yet in regard to certain laws, notably the laws of property, there are important differences between province and province. To take one among many instances, there is in the Madras Presidency a special class of legislation with regard to impartible estates of big landlords who would otherwise have been governed by the Hindu laws of partition. There is no legislation analogous to it in the United Provinces of Agra and Oudh. But even within the United Provinces, there are differences in these laws. The Zamindars of the province of Agra are governed by one class of personal law and the talukdars of Oudh by an entirely different Act. Thus even though civil

law in all its branches is a central subject under the 1919 Act, the provinces, with the previous sanction of the Governor-General, have legislated on certain branches of them, whenever they have felt necessary to do so to meet local needs. The whole question was found very technical and complicated, even after separating, where possible (and this was not always possible), those branches of law which appeared to require uniformity from those of a purely provincial nature. It is perhaps with these difficulties in mind that the Committee on the Legislative Division of Powers (Third R.T.C.) remarked—‘The allocation of every subject to the exclusive jurisdiction of either centre or provinces would seem to involve the loss of uniformity in directions where uniformity is desirable, or else an undue curtailment of flexibility and of provincial initiative—or, more probably a combination of both disadvantages.’ The big subject of civil law and procedure is split up into a number of items, and after eliminating as far as possible those which are of a ‘particularly’ provincial nature, the rest are placed in the Concurrent List (4—12). The intention of providing for this concurrent field is to secure the greatest measure of uniformity which may be found practicable, but at the same time to enable the Provincial Legislatures to make laws to meet local conditions. But as the federal law prevails over the provincial law in the concurrent field, it is conceivable that in course of time the whole field of concurrent legislation may be occupied by Acts of the Federal Legislature. If this would happen, it may prove a hardship in some cases, where certain aspects of the law in this list require to be treated in a special way by a province or

provinces so as to meet their peculiar local conditions. To take an instance, we may suppose that the Federal Legislature passes a general statute relating to the law of succession in certain cases. Now, in the Punjab they have their own custom. The custom is for a particular tribe or group the governing principle. It may happen that certain peculiar customs as these may be repealed or abolished by the federal law and the change may cause great hardship to the people. In such cases, there must be some stability for the provincial law. To secure this, it is provided that any such provincial law may be *reserved* for the assent of the Governor-General. If the Governor-General gives his assent to it, it occupies a place *analogous* to any subject in the provincial list, which cannot be touched by the Central Legislature. The Federal Legislature however can amend or repeal such an Act of the Provincial Legislature, with the previous sanction of the Governor-General given in his discretion.¹ Thus in the limited sphere of the concurrent field is preserved in a way the special feature of the existing system of division, under which the Governor-General's previous sanction gives validity to a provincial Act even on a central subject and *vice versa*.

There is another important group of subjects included in the Concurrent List which refer to 'labour legislation.' Under the Devolution Rules, these are in

¹ The Government of India Act. Sec. 107 (2). On this difficult question of civil law, Cf. Sir Tej Bahadur Sapru's speech at the Federal Structure Committee (first session) pp. 91-92, the Report of the legal sub-committee (appendix II to the second report of the Federal Structure Committee), and Mr. Zafrullah Khan's speech at the Federal Structure Committee (second session) p. 176.

the Provincial List, but with the proviso 'subject to legislation by the Indian Legislature.' The administration is provincial, whereas legislation is central. Should these be made completely central? These are subjects which involve a great deal of expenditure on administration. During the discussions on the distribution of financial resources between the Federation and the Units, Sir Muhammad Shafi again advocated the elimination of 'central' subjects, as these would involve many complications both of a constitutional and financial nature. These would perhaps necessitate keeping two budgets, with separate funds, one for the federal and the other for 'central' subjects.¹ It seems that every one might have agreed at the time—at least that is the opinion of the Peel Committee—'that the aim of the new constitution should be to eliminate, as far as possible, any 'central' subjects; but so far as could be foreseen, it seemed likely that a residue of such subjects (notably certain civil and criminal legislation) would remain indefinitely. It appears *probable, however, that the ideal will be more easily attained on the financial side.*' It seems doubtful if all the parties concerned understood clearly or cared to face the logical deductions from the above proposition. The Peel Committee tacitly assumed that the administration of these subjects would be provincial, and proceeded on their investigations with the idea that there would not be 'central' charges of any great magnitude.

As the provinces administer these 'central' subjects and as they have to find the money required for

¹ Federal Structure Committee (second session) pp. 153-154.

their administration, it necessarily follows that they are entitled to a voice in 'central' legislation on these subjects. Otherwise, there will be a division of responsibility, with all the resulting friction, or an encroachment on the sphere of provincial autonomy. But then, what is the best way of securing this co-operation between the two governments in practice? Should it be by way of imposing statutory restrictions on the legislative discretion of the central government, such as the requirement of the consent of a majority, if not all, of the provinces to any of its legislative proposals on subjects in this group, or the one proposed in the White Paper that it should not legislate in such a way as to impose financial obligations on the provinces? These have been rejected by the Joint Parliamentary Committee as being most inappropriate and as defeating the very object in having a concurrent list. Any such restrictions moreover are quite unnecessary, as the central government would find it impossible in practice to make use of its legislative powers, throwing financial burdens on the Provinces, without satisfying itself in advance if the Provincial Governments are prepared to shoulder the burdens and to co-operate with it. The difficult problems that arise in the concurrent field might best be tackled in conference between Federal and Provincial Ministers. In the opinion of the Joint Committee, the actual relations between the Centre and the Provinces in this sphere should be allowed to shape themselves by the development of constitutional usage and the pressure of public opinion. They however suggest, perhaps as an aid in such a development, that the Governor-General should be given guidance in his Instrument of Ins-

tructions as to the manner in which he is to exercise his discretionary powers in relation to the subjects in this list.¹

The Division of Administrative Powers

(1) Between the Federation and the Provinces.—

The constitution places a 'moral obligation' on the Provincial Government to exercise its executive power and authority so as to secure that due effect is given within the province to every Act of the Federal Legislature which applies to that province, whether it be in the exclusive federal field or the concurrent field.

With regard to the list of exclusively federal subjects, the Federal Legislature has power to devolve the administration of any of them on its behalf on the Provincial Government or its officers. This means that the Federal Legislature has the discretion in the exclusively federal field either to employ its own agency or to employ the Provincial Government as its agent in the administration of any of these subjects. If it employs the provincial agency, any extra costs of administration incurred by the Provincial Government solely for this purpose (i.e. 'which that government would otherwise not have incurred') must be borne by the Federal Government. If there is any dispute as to the amount or the incidence of any charges so involved, it will be referred for decision to an arbitrator to be appointed by the Chief Justice of the Federal Court, and his decision will be final and binding on both the Governments.

With regard to the actual administration of fede-

¹ Joint Committee Report: para 234.

ral subjects, the idea seems to be that the present system will be continued with as few changes as possible. The future Federal Government, as the present Government of India, will employ its own agency in the administration of such matters as railways, posts and telegraphs, customs and income-tax. In other matters, it may continue the present system of administration through the provincial agency. When it devolves the administration of these subjects on the Provinces and provides the cost of that administration, it has a right to see that the laws are administered efficiently and in accordance with its own policy. To that end, the Federal Government can give directions to the Provincial Governments prescribing the manner in which they should exercise their executive authority and laying down the standards of efficiency they should seek to maintain in the administration of laws on these exclusively federal subjects.

There is some interdependence between the administration of certain federal subjects and the administration of certain provincial subjects. Thus, while 'railways' is a federal subject, 'railway police' is a provincial subject. It is possible that the administration of the federal subject of railways may be affected by inefficiency or inadequacy of strength in the railway police. Again 'port quarantine' is a federal subject, while 'public health and sanitation' which has intimate connection with it, is a provincial subject. It is possible here also that a provincial government may administer its public health and sanitation arrangements in such a way as to make ineffectual the arrangements regarded as necessary for the maintenance of quarantine in ports. In all such cases, the

Federal Government can give directions to the Provincial Government to see that the latter's executive power in the exclusively provincial sphere is exercised in such a way as not to affect or in any way interfere with the administration of a federal subject.¹

(2) *Between the Federation and the States*.—The constitution lays a moral obligation on the Ruler of the State to secure that due effect is given in his state to every law passed by the Federal Legislature which applies to that territory. The Governor-General is empowered, and if the Instrument of Accession of the state so provides, is required, to make agreements with the Ruler of a state for the carrying out in that state, through the agency of the state authorities, of any federal law which applies to it. But every such agreement must contain provisions enabling the Governor-General *in his discretion* to satisfy himself, by inspection or otherwise, that the law is administered in accordance with the policy of the Federal Government, and if he is not satisfied, to issue such directions as he may think necessary.² If any dispute arises under an agreement between the Federation and a state as to whether the executive authority of the Federation is exercisable in that state with respect to any matter or to the extent to which it is so exercisable, the question may be referred by either party for decision to the Federal court.³

The general attitude of the states is that they should carry on the administration of federal subjects

¹ Joint Committee Minutes of Evidence: Vol. II-B, p. 1127; Report, para 239; The Government of India Act. Sec. 126 (1).

² The Government of India Act. Sec. 125.

³ *Ibid*: Secs. 128 (2), 204 (1) (a) (ii).

themselves. In a few cases, as in the posts and telegraphs department, where there have already been officers of the central government working within the states, they agree to allow the old system to continue. But they do not want to allow any extension of the system in future. They demand that their subjects should not come into contact with federal officers in the day-to-day administration within their territories, as for instance in the collection of federal taxes. They view such a possibility with great aversion and fear. Their objection to the administration of federal subjects by federal officers within their states is based, as Mr. Panikkar tells us, on the ground 'that it is bringing into the states a third party to which the people of the state and the organisations of the state would have to look.'¹

It is clear therefore that so far as the larger states at least are concerned, they would reserve in their Instruments of Accession the right to administer federal subjects on behalf of the Federal Government. But there may be variations in the case of the smaller states. In making these agreements, the Governor-General will take into account, before conceding this right to a state, its fitness and efficiency for the administration of each particular subject. He will be guided in this by his past experience and the past history of the state. Again, even if the administration of a small state may be efficient, he may not agree to make over to it the administration of a particular subject if he is satisfied that it is either wasteful or beyond the capacity of the small resources of the state.

¹ Minutes of Evidence: Vol. II-A. Q. 2332.

There is however the possibility that if a number of small states situated near one another join together to carry on certain expensive services common to them all, the Governor-General may entrust the administration of any of the federal subjects to this 'conjoint authority' after satisfying himself as to its efficiency.

In all these cases where arrangements are made for the administration of federal subjects through state agency, the Governor-General will satisfy himself, through inspection, that an adequate standard of administration is maintained. There will be federal officers within the state to inspect the administration of federal subjects and they will make their reports to the Federal Government. But the Federal Government has no power to give directions to the state (as it can in a similar case to the provinces), if a particular subject is badly administered or if a particular law is not properly enforced. It is laid down that the Governor-General, acting *in his discretion*, may, after considering any representations made to him by the Ruler, issue such directions to him as he thinks necessary for the purpose of ensuring that the federal obligations of the state are duly fulfilled. The Indian Princes have laid great stress on this point—that the Governor-General *in his discretion* (and not the Governor-General as the constitutional head of the Federal Ministry) should give them these orders.

Sir Samuel Hoare is very fond of dwelling on the fact that the Federal Government is composed of the representatives of both the states and the provinces, that a law passed by the Federal Legislature is passed by both the states and the provinces, and that therefore no conflict need be apprehended in practice in the

cious argument. Unless he thinks that in practice the states always would have a dominating voice in the making of federal laws, this loses much of its seeming plausibility. What ground is there to expect that in the enactment of a federal law, the majority of the states will always be on the side of the 'ayes'? Apart from this, is there not the possibility that some of the bigger states like Hyderabad, Mysore or Kashmir may not always vote with the majority, even if that majority included a majority of the states? In these cases, how is the law to be enforced in those states who have not given their consent to that law in the Federal Legislature? The Secretary of State may say that he is postulating reasonable provincial governments and reasonable state governments which normally carry out the federal law. But at any rate in the case of the former, he has provided for adequate inspection of their administration by the Federal Government which can give them the necessary orders for the purpose, and which can supersede any or all of them by its own agency if it is dissatisfied with their administration. And it is precisely this that has not been provided for in the case of the states. When pressed on the point, the Secretary of State replied that there was no intention of marching an army into a state to enforce a law, that as the federal law was in effect the law of the state, the states would naturally carry it out, and in any case as it was not possible to enforce the law in the state in the ordinary way through federal officers, it was not possible to provide for any sanctions.¹

¹ Minutes of Evidence: Vol. II-B. Qs. 12812—12817.

It can of course be argued that the very fact that it is the Governor-General who gives directions in his discretion is itself sufficient to put pressure on the states to enforce the law, because the Governor-General in his discretion is indistinguishable from the Viceroy who exercises paramountcy powers with regard to the states. If the Governor-General issues instructions to a state and if it does not comply with them, there is that power in reserve—in the field of Paramountcy—which he can invoke for the enforcement of his instructions. But will this not be blurring the line in practice between the Viceroy as the representative of the Paramount Power and the Governor-General as the constitutional head of the Federal Government? There is that risk no doubt, but such a criticism would seem to be based on the assumption that the intervention of the Governor-General under his powers of Paramountcy would be of common occurrence. The Secretary of State however contemplates it 'only taking place as the ultimate resort in a very serious emergency, an emergency so serious as to amount in practice to the breakdown of federation in respect of that state.'¹

The long and the short of the whole story is this: the federal officers have powers of report and nothing more in the administration of a federal subject by a state authority. If the state has not surrendered the right of administration on a federal subject (and we may expect that most likely it would not make such a surrender), the Federal Government have to put up with it as best they can. If it is a serious or very im-

¹ *Ibid.*: Vol. II-B; Q. 12900.

portant matter, the Governor-General (i.e. the Federal Ministry) would most humbly beg the Viceroy to see to its enforcement. Unless the Viceroy also thinks that it is a serious affair, he will not give the necessary directions to the defaulting state to set things right. Even when he gives these directions (sometimes perhaps, out of deference to public opinion in a particularly bad case), the state may still prove recalcitrant for one reason or other. It may be because it thinks that the Governor-General is in secret sympathy with it or because it thinks the case is not so serious as to invite the Viceroy's active intervention. It is clear that unless the Viceroy thinks that there is a breakdown of the federation in respect of that state, he will not invoke his paramountcy powers to enforce the particular law or laws within that state. Thus the Federation is dependent for its successful working on the goodwill and kindness of the states and on the good offices of the Viceroy and Governor-General—or, to say the same thing, of the British Government.

(3) *The Federation in the Concurrent Field.*—The chief peculiarity of the Concurrent List is that it is intended as a compromise between two opposing schools of thought—control *versus* co-ordination as a means of securing uniformity. It has therefore been proposed in the White Paper¹ that with regard to the administration of the concurrent subjects, the Federal Government is to have no power to give directions to the Provincial Government, as in the case of the exclusively federal subjects. The subjects in List III are

¹ This is not clear in the White Paper. See the explanation of these Proposals by the Secretary of State. Minutes of Evidence: Vol. II-B. p. 1127.

concurrent only to the extent of legislation. From the point of view of administration, they are purely provincial. If the Provincial Government does not administer the exclusively federal subjects to the satisfaction of the Federal Government, it has the option of appointing its own agency for administering its laws, but it is constitutionally debarred from doing so with regard to the administration of the concurrent subjects.

When the Secretary of State explained this to the Joint Committee on Indian Constitutional reform every one there present was mystified by this unprecedented peculiarity. It is certainly a novel idea, unknown to any federal constitution. In the concurrent field, the Federal Government may pass a law, but the Provincial Government has the full discretion to enforce it or not, as it thinks best. There is no power in the Federal Government to see that it is enforced. It is only on a willing co-operation between the two that uniformity of law in these subjects can be secured. There is something of the nature of a partnership between the two Governments in the concurrent sphere.

So far as a large number of items (1-25) in the Concurrent List are concerned, there arises no difficulty as to the possibility of non-enforcement. They deal mainly with questions of law not involving much of administration. As according to the constitution the federal law is to have pre-eminence in the concurrent field, the courts will certainly enforce the federal law in all the above matters over against any provincial law that may have been enacted on any of them.

The real difficulty arises with regard to that im-

portant category of subjects (items 26—36) dealing with social and economic legislation, such as factories, welfare of labour, employers' liability and workmen's compensation, health insurance and invalid and old age pensions, unemployment insurance, trade unions, industrial and labour disputes, electricity, infectious diseases etc. These involve heavy expenditure on administration—that is to say, throw heavy financial burdens on the provincial governments. We have seen already the necessity of provincial agreement in all such matters. We cannot however forecast anything as to the extent and nature of such agreement, since this is left to be determined by the growth of convention and usage. For instance, is there to be complete and unanimous agreement among the Provinces before the Federal Legislature can legislate on any of them? It is possible that one or two of them may disagree with the rest on a particular question, and in that case, is the Federal Legislature to pass the law or not? The Secretary of State does not like to give a veto to one province in such a case. 'I would rather the federal legislation was passed,' he said 'if all the provinces except one required it, even though the single province might hold out afterwards.'¹ But it is really here, we may argue, that the necessity of enforcing the law even against the will of that single province will be found beneficial in the interests of the whole country. The Joint Committee have come to the same conclusion. Uniformity of legislation, they say, is useless, if there is no means of enforcing reasonable uniformity of administration. So they

¹ *Ibid*: Q. 12780.

recommend, that so far as this class of subjects (items 26—36) is concerned, the Federal Government should have the power to issue directions to the Provincial Governments for the enforcement of law, 'but 'only to the extent provided by the Federal Act in question.' This proviso is perhaps intended to secure to the Provinces an adequate voice in the determination of the extent of the administrative control necessary in each case and thus to give no ground for suspicion that there is going to be an encroachment on provincial autonomy. And as a further safeguard against any such possibility, the Joint Committee suggest the requirement of the previous sanction of the Governor-General in his discretion to the clause or clauses in the Act, conferring such powers on the Federal Government.¹

There is however the possibility—is it a remote possibility?—that a Provincial Government may refuse to carry out the directions of the Federal Government. This may happen in the exclusively federal field or the concurrent field, more probably in the latter. As one of the 'special responsibilities' of the Governor of a Province is 'to secure the execution of the orders lawfully issued by the Governor-General,' and since the directions of the Federal Government are in legal form the directions of the Governor-General, it would become the duty of the Governor to secure their execution even in opposition to the advice of his Ministers. But sometimes serious conflicts may issue between the two Governments, especially where the execution of these directions would involve the

¹ Report: para 220; The Government of India Act, Sec. 126 (2).

Provincial Government in heavy expenditure. And a constitutional deadlock may ensue in the Provincial Government, if the Governor is compelled in all such cases to overrule his Ministers at the instance of the Federal Government. In all such difficult cases, the Joint Committee are of opinion that the directions of the Federal Government should be given by the Governor-General *in his discretion*.¹ They think that the Governor-General's discretionary power would keep the scales of justice even between the two parties and help to bring about an amicable settlement of the dispute between them.

¹ This has been incorporated in the Government of India Act. Sec. 126 (4).

CHAPTER V

FINANCIAL RELATIONS BETWEEN THE FEDERATION AND ITS COMPONENT UNITS

‘Having found the facts, we have been content to present them as facts. It seems inevitable that the Federation must be established, in large measure, upon the basis of the *status quo*.’

—Percy Committee Report. p. 28

The Problem of Federal Finance

THE problem of federal finance may be briefly stated to consist in the difficulty of reconciling political and economic principles in one and the same tax-system. The fundamental principle of federalism is the ‘autonomy’ of the various bodies—central and provincial—within their respective spheres of authority. This autonomy or freedom from external control can only be secured, if every one of them has at its disposal adequate and elastic sources of revenue. The revenues must be adequate relative to the functions which each has to discharge, and they must be elastic or capable of expansion to enable it to meet its growing needs in normal times and to tide over difficulties in abnormal times. If either of these is not provided for, the one which has inadequate or inelastic sources of revenue must continually or spasmodically be dependent upon the favour and goodwill of the other in carrying on its legitimate functions.

To secure this autonomy, it is necessary to divide the field of taxation between the two governments. There are certain simple and obvious principles for such a division. There are certain taxes which, by

their very nature, ought to be uniform throughout the country, whereas there are others which may vary from locality to locality. There are again certain taxes which can be more economically and efficiently administered by a central authority, and there are also others which can best be administered only by a local authority. Theoretically speaking, it is possible to make a distinction between the tax-fixing authority and the tax-collecting authority in the case of various taxes. But in practice this is not always possible. Thus, land revenue assessment and collection can be best carried out by the local government since it possesses intimate knowledge of local conditions, but the land revenue also is the kind of tax which does not need uniformity in rates and therefore does not need the services of a central tax-fixing authority. On the other hand, it has been found to be increasingly difficult to make effective or equitable state or provincial taxation in the case of a large category of taxes, the basis of which is becoming nationwide. Such taxes as consumption taxes, corporation tax, income tax, inheritance tax can be efficiently administered only by a central authority which can minimise expenditure on collection and secure a larger yield by making evasion of the tax difficult. But it is precisely these taxes which require uniformity in the rate and hence a central tax-imposing authority, as variations in rates cause great hardship to trade and industry.

A well-balanced tax-system for a federation demands a combination of these different principles—adequacy and elasticity to secure autonomy, and efficiency and suitability to secure administrative economy. As Sir Walter Layton remarks, 'The prob-

lem of financial relations between the central and provincial authorities in any country is ideally solved where the sources of revenue which, from the administrative point of view, fall naturally within the sphere of the provincial governments, harmonise so far as their yield and elasticity is concerned with the functions which are assigned to those governments, while those which are naturally central sources accord with the functions of the central government.¹

But this ideal is not possible of attainment in practice, as the greater number of taxes can be efficiently administered only by a central authority. Many of the more important taxes like the incometax and the corporation tax are closely connected with the trade and industry of a country, and trade and industry in modern times are no longer local, but transcend the artificial political boundaries. So a compromise has been found necessary to overcome this disharmony between the distribution of functions on the one hand and the allocation of resources between the centre and the provinces on the other. According to this compromise, the different sources of revenue are, first of all, allocated to either government according to their appropriateness to the one or the other, and for such deficiencies as may be found thereafter, certain 'balancing factors' are made use of. In the case of these 'balancing' taxes, a distinction is made between the administration of the tax and the enjoyment of its yield. While the administration is left to the appropriate authority (generally the central government), the yield of the tax or taxes is made over in part or whole to the provincial governments.

¹ Simon Commission Report: Vol. II. p. 210.

Another principle which is of considerable importance for us in India is that in an ideal federation, there should be an 'equitable' distribution of burdens and benefits among the various federating units. 'Equity' in this case is not mere 'uniformity,' and the term is indeed difficult to define. We must note that federal finance is only a *special* application of the principles of Public Finance, and a widely-accepted principle of Public Finance all over the civilised world at the present time is that Government should employ taxation as a means to rectify the inequalities in the distribution of wealth among its people. This principle may be applied to a certain extent as between the peoples of the different units in a Federal Polity. It is the duty of the federation to see, in the interests of general national progress, that certain *minimum* standards are maintained all over the federation in certain important services. Equity demands—and here again are the same assumptions as in a system of progressive taxation with regard to the meaning of 'equity'—that the richer units should bear more than their proportion of common burdens, and that the poorer units should receive 'federal aid' to attain in their activities the standard of 'national minimum' set by the federation.¹ This may also be

¹ For a good discussion on this 'theory of Transferences' in a federal state, see Prof. Adarkar's *The Principles and Problems of Federal Finance* Chap. XI. On page 183, he puts the whole thing in one sentence: 'In a well-organised federation, it is indeed the duty of the federal government to apply the common resources in such a manner that the welfare of the nation as a whole is maximised; this is to be done by making real transfers from the richer to the poorer units by taxation designed to fall more heavily on the former and by subsidies or subventions particularly benefitting the latter.'

looked at, as what is implied in the principle of 'adequacy' noted above, *viz.*, that every government should have adequate sources of revenue relative to its needs.

The Meston Settlement

We have already noted the intimate connection that exists between the distribution of functions on the one hand and the allocation of the sources of revenue between the centre and the units on the other. In the previous chapter, we have seen that the federal government and the provincial governments will discharge the same functions as they have hitherto been doing under the present constitution. If the respective functions of the two governments will continue just as they have been, there is obviously no need to make any changes in the present allocation of revenues between them, which might have been designed in relation to those functions. The Federal Finance Sub-Committee (the Peel Committee) of the Round Table Conference have generally proceeded on this basis. But in their proposals, they have taken account of certain defects in the present allocation, which were not foreseen by its authors, but which have since been revealed in the working of the Reforms. They have also taken into careful consideration certain important principles and methods of allocation suggested by Sir Walter Layton in his admirable Report as the financial assessor to the Indian Statutory Commission. It is therefore necessary for us to study the scheme of Indian Federal Finance in its historical relation to the present system.

Under the present system, certain heads of revenue are allocated to the provinces, and all the residuary

powers of taxation are left with the central government. The division may be shown as follows:

| CENTRAL | PROVINCIAL |
|---|---|
| Customs. | Land revenue and Irrigation. |
| Excises (other than alcohol, narcotics and drugs). | Excises on alcohol, narcotics and drugs. |
| Salt. | Stamps. |
| Opium. | Forests. |
| Receipts from railways, posts and telegraphs and any other commercial undertakings. | A share in the future increase of incometax. |
| Profits of currency. | The first schedule in the scheduled taxes rules (which includes among others, taxes on succession, on betting and gambling, on advertisements, amusements.) |
| Incometax. | |

This clear-cut allocation was recommended by the authors of the Reforms as the only way of giving the provinces fiscal autonomy. Before their time, there were a number of 'divided heads,' viz., the land revenue, stamps, excise, incometax and irrigation, which were shared in certain proportions between the central and provincial governments. This system gave an inducement to the central government to interfere in the details of provincial administration. The abolition of these 'divided heads' and the complete separation of the sources of revenue of the two governments were recommended by them as a necessary corollary involved in provincial autonomy. In making over some of these 'divided heads' to the provinces and the others to the centre, they were guided chiefly by administrative considerations. They did not make any distinction between the imposition and administration

of a tax on the one hand and the allocation of its proceeds on the other. They apparently thought that the two should go together. The only exception to this rule is to be found in the case of 'stamps'—a head which is completely provincial for allocation of revenue, but a part of which (commercial stamps) is central for legislation. But even this exception is not to be found in the original scheme, but has been recommended by the Meston Committee which was appointed to examine their proposals.

The underlying assumption of these proposals therefore is that this division, based merely on administrative considerations, would also secure adequacy and elasticity in the finances of each of these governments. The working of the Reforms has demonstrated the untenability of such an assumption. If we examine the distribution of functions between the centre and the provinces, we are struck with the fact that all the social utility services—education, public health and sanitation, agricultural and industrial development etc., which require a large amount expenditure on them, are left with the provinces. But the provinces are not provided with adequate and elastic sources of revenue to meet their growing needs. Land revenue and excise are the only two important sources of revenue for them; but the former is stationary and inelastic, and the latter is a dwindling source of revenue owing to the growth of a strong prohibitionist movement. Thus there is a great deal of disharmony between the functions which the provinces have to discharge and the sources of revenue which they have at their disposal. All the expanding sources of revenue are left with the central government, which

has only defence and debt charges as the major items in its expenditure which is however too large and ought to be reduced.

This financial settlement (popularly known as the Meston Award) has also been severely criticised as being inequitable as between the provinces. It has perpetuated the inequalities in financial strength among the various provinces, which, they say, is not due to any inherent misfortune of theirs, but which is only a legacy of the past. It is because that the Government of India, in times gone by, treated some more generously than the others, that these inequalities have arisen. The Meston Settlement has not raised its little finger to rectify any of these inequalities. The authors of the Reforms apparently assumed that 'uniformity' of treatment would somehow also make for 'equality' of treatment. This is another untenable assumption of theirs, which has caused so many difficulties in the working of the Reforms.

The Layton Scheme

Sir Walter Layton in his valuable report to the Indian Statutory Commission has delved deeper than others in diagnosing the defects of the settlement. He agrees generally with the first part of the criticism that the central government has expansive sources of revenue relative to its functions, especially as every one is now agreed upon the desirability and even the necessity of bringing down the expenditure on the army, which is indeed disproportionately high to the total revenues of the country. The larger part of the surplus that may thus be expected to accrue to the central budget may be made available to the provinces for

profitable expenditure on 'nation-building' services. But he goes further than this and says that this surplus revenue is not in itself sufficient for the growing needs of the provincial governments, and therefore he argues the necessity of raising new sources of revenue for the financing of their beneficent activities. He has examined a number of such new sources of revenue—excise on matches and tobacco, death duties, terminal taxes, taxes on agricultural incomes etc.—which may find a place in the future financial system of the country.

To the second part of the above criticism that the settlement has left the various provinces very differently situated financially, he agrees also in substance, but he offers a more profound criticism on the whole question. He shows that the existing provinces are unsuitable units from the fiscal point of view. He argues therefrom that 'uniformity' of treatment does not necessarily always conduce to 'equality' among the provinces. Even the uniform allocation of all the taxes among the provinces will not do justice to some, as the yields of different taxes vary enormously as between provinces. There is therefore, he urges, *some* force in the counterclaim that some of the revenues of India should be redistributed among the provinces *according to their needs*. He also points out the necessity and desirability of such a course in certain special cases in the interests of the general progress of India as a whole. 'It is not wise statesmanship,' he says, 'to leave certain large areas in a much more backward state of development than others.'

The importance of the Layton Scheme for Indian Federal finance consists not so much in the specific

allocation of revenues that he has made, as in the *principles* that he has laid down and the *methods* that he has employed in the making of that allocation. He proposes to divide the sources of revenue into three categories, viz.,

- (i) revenue collected and spent by the 'central government.
- (ii) revenue collected and spent by the provincial governments.
- (iii) revenue collected by the central government and distributed either in part or whole to the provinces on the basis of origin or population.

The first two are familiar ones. The third makes an improvement on the present system. As a great many of the new taxes require for their effectiveness uniformity in legislation and central administration, and as the Montagu-Chelmsford dichotomy does not secure adequacy and elasticity in the provincial sources of revenue, he makes this new division.

In this scheme, he is trying to accomplish two things, viz., to divert a part of the supposed central surplus to the provinces and secondly, to secure to them the proceeds of the new taxes. At the same time, his allocation prescribes remedies to the two defects found in the working of the Meston Settlement. So it may be conveniently studied under the two heads, viz., (1) the allocation of the sources between the centre and the provinces, and (2) the effect of that allocation as between provinces.

Under the first head, we may summarise his recommendations thus:—

- (1) He proposes to build up a 'provincial

fund' out of the proceeds of the new national excises on matches and cigarettes, and ultimately also of the salt duty (which is now central). This fund is to be distributed among the provinces on a *per capita* basis.

(2) He proposes to make available a portion of the incometax receipts (now completely central) to the provinces. For this purpose, he proposes to allot to them 50 per cent of the yield of the tax on personal incomes (i.e., other than the surtax on companies). This is to be distributed among the provinces on the basis of origin.

(3) He makes provision for the levy of surcharges by the central as well as the provincial governments on certain taxes.

(a) In order to meet the claim of the industrial provinces like Bombay that they should not merely receive a share of the incometax, but should be allowed also to rectify the inequalities in the incidence of provincial taxation as a whole, he proposes to give the provinces the right to levy a surcharge on the incometax, not exceeding 25 per cent of the rate.

(b) In order to enable the central government to raise additional revenues in case of emergency, he proposes to give it the right to impose surcharges on all the taxes that it raises for the benefit of the provinces (i.e., the incometax, the excises etc.).

How far does this make for an equitable distribution of resources among the provinces? The industrial provinces such as Bombay and Bengal would be particularly benefited by the allocation of half the yield of personal incometax among the provinces on the basis of origin, and also by the power to make

surcharges to it. Sir Walter Layton, we have seen, accepts the principle of distributing revenues according to needs as being just in certain cases. One way in which he has applied this principle is by distributing the proceeds of the national excises among the provinces on a population basis. The poorer provinces with large populations like Bihar and Orissa would receive on this basis more than they might have actually contributed to them. He has also made certain general proposals to meet individual cases. In the case of Bengal and Bihar, the most important cause for the inadequacy of their revenues is the low yield of the land tax, which is fixed once for all by the Permanent Settlement. The proposed taxation of agricultural incomes would, at least partially, remedy that defect. The use of the terminal taxes—though it must necessarily be at a very low rate—would produce a good revenue for Assam, and Bihar and Orissa, who have no municipal taxes of the kind at present. The defect, if there is any, in this part of the scheme is that he has not worked out figures to prove the extent of the benefit in these various cases. He does not provide for subventions for a time at least to provinces like Assam, and perhaps also Bihar and Orissa, where the desired result might not be secured by the use of the above methods.

There is also another aspect of the scheme which is of considerable constitutional importance. Sir Walter Layton proposes that many of the new taxes would have to be centrally imposed and administered, but their proceeds should be distributed among the provinces. This however goes against the cardinal principle of representative government that there

should be a close correlation between control of expenditure and responsibility for raising the revenue. The representatives of the people in the legislature would be careful in proposing new expenditure, if they have to find out the ways and means themselves for meeting that expenditure, which is always an unpleasant and unpopular business. This wholesome check against extravagance is removed if one Government only gets the unpopularity incident to the imposition of taxation and the other only the enjoyment in spending the revenues. A *via media* has therefore to be struck to overcome this difficulty, and Sir Walter provides for consultation between the Federal and Provincial Finance Ministers in an Inter-Provincial Finance Council, before changes could be introduced in any of those taxes which are imposed by the central legislature either partly or wholly for the benefit of the provinces.

The Peel Committee Proposals

The Federal Finance Sub-Committee (the Peel Committee) of the Second Round Table Conference have adapted the financial settlement under the Montagu-Chelmsford Reforms, together with the improvements suggested in the Layton Scheme to the new situation that has arisen on the prospective entry of the Indian States into an All-India Federation. They have followed the assumptions underlying the Layton Scheme that the sources of the central government are more adequate than are necessary for it, as these have shown great expansion during the last decade, and as its expenditure, especially on the army, can and ought to be reduced to an appreciable extent; and

secondly, that there is great need for the diversion of this surplus to beneficent services in the provinces. They have also had to take into account the refusal of the Indian Princes to give to the Federal Government the power to impose direct taxation on their subjects. They have had to start therefore, in the words of Lord Peel, 'as practical men from the existing state of things.' It is obvious to them that, 'if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the provinces and the states.' This means that the federal sources of revenue should be confined to indirect taxes. But the indirect taxes as are now levied by the central government would not be adequate for federal purposes. Customs revenue would inevitably decline if there would be an intensification of protective policy. So, as a partial set-off against this loss, the central government should be given power to levy excise duties on all those articles on which it imposes import duties. Even then, it may well be doubted, whether indirect taxes alone would be sufficient for the Federal Government. The experience of other federations does not support such a hypothesis. If only it were possible, they would very much have liked to see that some part of the income-tax receipts are made available to the Federal Government in case of necessity. But the facts being what they are, they could not recommend such a course. They have however suggested that at least the corporation tax may be made federal. There is close connection between the tariff policy of the central government and the yield of the

corporation tax. If there is an intensification of protective policy, the profits of the indigenous companies will presumably increase and necessarily also the yield of the tax on those profits. Thus the corporation tax may be viewed like the new excises, as a partial set-off against a possible decline in customs revenue. There would certainly not be any insuperable objections from the side of the Indian States to this particular form of direct tax, as this need not mean collection by federal officers.

Under these circumstances, the Peel Committee have been forced to make taxes on income (other than the corporation tax) completely a provincial source of revenue. They have however recommended that it should be collected by one centralised administrative service for the whole of British India. They have also expressed an opinion on the desirability of maintaining uniformity of rate in the incometax, since variations in it may lead to discrimination between industries in different provinces. In order to meet the constitutional objection to the division of responsibility between the authority which imposes and the authority which enjoys the proceeds, they have recommended, on the lines suggested by Sir Walter Layton, that before proposing a change in the incometax rate, the Federal Finance Minister should consult provincial Finance Ministers.

The Committee have also taken into consideration the new taxes recommended by Sir Walter Layton—taxes on agricultural incomes, terminal taxes, death duties etc., as well as the new methods that he proposed, in the new allocation they provisionally suggested. The following table shows clearly the new

garb that the original allocation under the Reforms has taken after the various changes and improvements suggested above are incorporated in it.

| FEDERAL | PROVINCIAL |
|--|---|
| Customs. | Land Revenue. |
| Salt. | Excises on alcohol, narcotics and drugs. |
| Export opium. | Stamps, with the possible exception of commercial stamps. |
| Excises on articles <i>on which customs duties are imposed</i> (with the exception of alcohol, narcotics and drugs). | Forests. |
| Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertakings. | Provincial commercial undertakings. |
| Profits of Federal currency. | <i>Succession duties</i> , if any. |
| <i>Corporation tax.</i> | <i>Terminal taxes</i> , if any (but subject to central regulation). |
| <i>Contributions from the units.</i> | <i>Tax on personal incomes</i> (imposition and collection central). |
| | <i>Tax on agricultural incomes.</i> |
| | The first seven taxes in the present 1st schedule to the scheduled Taxes Rules. |

It will be seen from the above classification that the Peel Committee have provided for contributions from the units in case of a federal deficit. These contributions are of two kinds, (a) initial contributions, and (b) emergency contributions. As they are allocating the incometax to the provinces, and as there will have to be some time before the Federal Government would be able to develop the new excises, they have assumed that there would be deficit in the federal budget for a term of years after the inauguration of the new constitution. The initial contributions are intended to cover this deficit. But these would only be temporary. Therefore the constitution should

specifically provide for the extinction of these contributions by annual stages within a definite period of time, say ten or fifteen years. The emergency contributions are however to be a permanent feature of the new constitution. These are provided for in order to ensure that the Federation might not be left resourceless in a 'grave emergency.'

With regard to the payment of initial contributions, the Peel Committee have outlined one method for the provinces and another for the states. In the case of the provinces, there would be payments and cross-payments for a term of years—the federal government distributing the incometax proceeds among them and the provinces paying the money back as contributions. On the other hand, in the case of the states, one may have expected that, having refused to come under the federal imposition of the incometax, they would have to pay their share of the contributions out of their pockets. But it should not be forgotten that many states are paying at the present time to the Government of India what are popularly known as 'tributes' of which there is no counterpart in British India. They are feudal in their nature and are most unequal in their incidence, as one state (Mysore) alone pays about one-third of the total amount due from all of them. These should have therefore no place in the future Federation. These tributes should be considered during the initial period as the share of the states' contributions to the Federation. They should be extinguished by gradual stages *pari passu* with that of the initial provincial contributions noted above.

The Peel Committee have considered also the

question of the ceded territories, which is closely connected with tributes. Some states in the past ceded territories to the Paramount Power in lieu of tributes. If tributes are abolished, the claim of these states for a restoration of their territories gains great importance. If restoration is not practicable, they ought to be paid some compensation for them.

The Peel Committee have recommended the abolition of tributes and the payment of compensation for ceded territories, as these are inconsistent with the federal idea. There are also other things which are equally untenable under a federal scheme. Many states enjoy 'immunities' with regard to certain important sources of prospective federal revenue, such as salt, customs, posts and telegraphs etc. In the interests of uniformity, these may be bought out by the Federation. The same course, they would not, however, recommend with regard to the removal of internal customs barriers which many of these states have set up, because 'this would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the states.'

The Peel Committee have settled only the general outline of the federal scheme of finance, and they have left the details to be worked out by two expert bodies—the Percy and Davidson Committees—the one for British India and the other for the states.

One part of the recommendations of the Committee on which Lord Peel, its chairman, spoke in apologetic terms was that they did not endow the Federal Government with sufficient resources. The Federation, he said, needed 'a good deal of financial elbow-

room,' as 'it has the great duty cast upon it of defence, with all the emergencies that may arise out of that consideration' and also as it would be responsible for the general credit of India.¹ This line of criticism was developed later in the discussion by Dr. Ambedkar² whose speech is interesting in view of the later events. He pointed out that the Federal Government would have also other responsibilities, which apparently were not considered by the Peel Committee. Besides defence and the general credit of India, it would be responsible for the co-ordination of certain welfare functions. The development of the 'backward tracts' would be its special care. It would have to pay subventions to some old and some new provinces, like the North-West Frontier Province, Assam, Sind and Orissa. These are heavy responsibilities for any federal government. But how has it been provided for the discharge of these onerous duties? Customs, the most important source of its revenue, are dependent for their yield on various uncertain factors—trade prosperity or trade depression, tariff policy etc. Opium is a dwindling source of revenue and with the cessation of export to China will soon disappear from the central budget. If the Congress party would ever have their way, the salt duty would vanish altogether. The corporation tax is at present a source of very

¹ Federal Structure Committee of the Second R. T. C. p. 162.

² *Ibid.* Pp. 196-200. Sir Maneckjee Dadabhoy, a member of the Peel Committee, characterised Dr. Ambedkar's speech as academic and said that he forgot to take practical politics into consideration. Dr. Ambedkar was supported, however, by Lord Lothian in many of his criticisms (*Ibid.* pp. 201-2). Similar also is the criticism of Prof. P. J. Thomas in his article 'The R. T. C. Scheme of Federal Finance' in the *Indian Journal of Economics*, January 1933.

small dimensions. So federal deficits would be the order of the day. But the Peel Committee have provided for contributions only in 'grave' emergencies. Is this a safe and sure method? Would this be a dependable method in all circumstances? Who is to decide whether any grave emergency has arisen or not? The advocates of provincial autonomy have already declared that the decision should rest with the provinces! But, could the states be depended upon to meet their share of the contribution in an emergency? That would indeed be a very large assumption. These facts point to the conclusion that 'for the purposes of adequacy, for the purposes of elasticity and emergency, the best course would be to widen and broaden the basis of the financial system of the Federal Government.' To this end, the incometax would have to be treated as a common source of revenue both for the Federal Government and the Provincial Governments.

When the Percy Committee went into the whole question, they found it impossible to *lay any time-limit* for the extinction of these provincial contributions. This is especially noteworthy, as they have started on their investigations with the optimistic assumption which has however not been realised, that the present depression would soon come to an end and that there would follow a period of reviving trade and increasing prices. So these contributions would have to be a *permanent* feature of the constitution. This is a situation which was not contemplated by the Peel Committee. The history of the provincial contributions under the Meston Settlement moreover has not been a pleasant experience to the Government of India. And the Federation has at last found friends

in what one may suppose, the most unlooked-for quarters. The British Government, who have all the while been passive spectators, have really a very great interest in the stability of the Federation. They have a special responsibility for the payment of interest on the Debt, and the army and its expenditure is their special care. When the decisive moment for action came, the Secretary of State did not flinch. He found friends for himself and the Federation in the Indian States. His proposal to allocate a percentage of the incometax proceeds to the Federation was very welcome to the Indian States, as that would relieve them of the unpleasant contributions, which otherwise they would have had to pay. Taking their cue from the Secretary of State's statement,¹ the states' representatives, with their superior bargaining power, insisted that a substantial portion of the incometax proceeds should be *permanently* allocated to the Federation, before they would undertake to assume *their share* of federal burdens! The Federal Finance Committee of the Third Round Table Conference recommended that the corporation tax, tax on federal officers, tax in federal areas, tax on Government of India Securities, and tax on the incomes of persons not resident in British India could with justice be assigned to the Federation. According to them, these would yield about $5\frac{1}{4}$ crores out of the $17\frac{1}{4}$ crores, estimated by the Percy Committee as the net yield of incometax. The representatives of the Indian States insisted that another *three* crores, or 25 per cent of the remainder should also be

¹ The statement was made on 6th December, 1932; it is printed as an appendix to the Report of the Federal Finance Committee (Third R. T. C.).

allocated *permanently* to the Federation. The White Paper provides for the division of the yield between the Federation and the Provinces in the proportions yet to be determined, after deducting first from the yield only the tax on federal officers and the tax in federal areas. These two heads together with the corporation tax would yield only 3.7 crores, according to the estimate of the Percy Committee. If the total amount of the revenue from the incometax would have to be $8\frac{1}{4}$ crores, as demanded by the Indian States representatives, 33 per cent of the 'net proceeds' from personal incometax would have to be permanently allocated to the Federation. But latterly, they have been demanding that it should not be less than 50 per cent!

The White Paper Scheme of Indian Federal Finance

The White Paper Scheme of Indian Federal Finance is based upon the recommendations of the Peel, the Percy and the Davidson Committees, with such modifications as have been recommended by the Federal Finance Committee of the Third Round Table Conference. In the methods of division, it follows the Percy Committee recommendations, which are on the same lines as those outlined in the Layton scheme. The White Paper scheme may be studied under the two well-marked heads, viz., (a) the allocation of resources between the Federation and the Units, and (b) the 'equity' of the allocation as between the Units.

THE ALLOCATION OF REVENUES BETWEEN THE FEDERATION AND THE UNITS

| Sources of revenue (1) | Powers of legislation (2) | Allocation of revenue (3) | Remarks (4) |
|---|---------------------------------|------------------------------|--|
| Import duties (except on salt); contributions from railways and receipts from other federal commercial undertakings; coinage profits and share in the profits of the Reserve Bank; the corporation tax. | Exclusively federal | Exclusively federal | The states will contribute to the corporation tax only <i>ten years after</i> the inauguration of the Federation. |
| Export duties; salt duties; excise duties (except those on alcoholic liquors, drugs and narcotics). | Exclusively federal | Federal | The Federal Government shall have power to assign a share or the whole of the proceeds to the units. This is only an 'enabling power' except in the case of the export duty on jute, at least <i>half</i> of which <i>must</i> be assigned to the producing units. |

THE ALLOCATION OF REVENUES BETWEEN THE FEDERATION AND THE UNITS—(Continued)

| Sources of revenue (1) | Powers of legislation (2) | Allocation of revenue (3) | Remarks (4) |
|---|---------------------------------|---|--|
| Taxes on income (other than agricultural income or income of corporations). | Central | The yield is to be divided between the Federation and the Provinces. The tax on federal officers and the tax in federal areas are exclusively federal. Of the rest, the share of the Provinces (which will be prescribed by Order in Council) would be not less than 50% and not more than 75%. | (i) The Federal Government can levy surcharges on the incometax <i>in emergencies only</i> on all the units for its own purposes. (The states would have to contribute a proportionate amount). (ii) The percentage originally prescribed as the Provincial share of the incometax cannot be increased by any subsequent Order in Council. (The India Act, Sec. 138 (1) (a)). |
| Duties in respect of succession to property other than agricultural land; terminal taxes on goods and passengers carried by railway or air and taxes on rail- | Central | Provincial. | The Federation has power to impose surcharges for its own purposes on these taxes. |

way fares and freights; stamp duties on bills of exchange, bills of lading, cheques, letters of credit, promissory notes, policies of insurance, proxies and receipts.

Land revenue; excise duties on alcohol, drugs and narcotics; taxes on agricultural incomes; stamps (other than those in class 4 above); forests and other provincial commercial undertakings; miscellaneous sources of revenue at present enjoyed by the province. (For a fuller list, see items 39-54 in List II).

Exclusively Provincial

Exclusively Provincial

N. B.—Any unspecified tax may be imposed either by the Provincial Government or the Federal Government, subject in either case to the consent of the Governor-General given in his discretion after consulting Federal and Provincial Ministers.

In the above classification, we find most of the important features of the Layton Scheme. The new methods of allocation that he has recommended are made use of here. He has made a distinction between legislation and administration on the one hand and allocation of revenue on the other. If we examine all those taxes which are federal (or central) for legislation in the above table, we find that with the possible exception of the excises in class 2, the powers are federal both for legislation and administration. Again, all the new taxes that he has proposed are also to be found here. We can find in class 2 the features of the 'provincial fund.' With regard to the incometax, the wheel has come full circle, and after many vicissitudes, his proposal to divide it between the central and provincial governments has to be adhered to in the end.

The Percy Committee assume that federal excises will be collected, as now, by provincial governments. For a time at least, the tobacco excise (by means of 'vend licenses and fees') could successfully be imposed only by the units. If all the revenue from the excises goes into the federal treasury, the provincial (and state) governments obviously would not have any incentive or interest in the growth of that revenue. On the other hand, there are some taxes (in class 4 above) which are levied by the Federal Government for the benefit of the Provinces. Neither can the central government have any interest in these. So, to give the Provinces (and the states) an interest in the administration of federal excises, the apportionment of a share of that revenue among them may be found desirable, and conversely, to give the central

government some interest in the levy of the provincial taxes, it is of course equally desirable to give it the right to impose surcharges on them.

The 'apportionment clause' in the case of federal excises is also intended to provide some elasticity in the financial scheme in view of future developments. It may be noted that this is only an 'enabling power.'¹ Nobody can compel the Federal Government to apportion the surplus, if it ever will have, among the units. It is left to its own discretion, subject however, to the previous sanction of the Governor-General given in his discretion. It has also the power when it distributes the surplus to lay down in the Act itself the particular basis of distribution among them. It may use this power to secure a mitigation, if not removal, of the internal customs barriers which some states have set up. The constitution gives it the power to lay down *any conditions* with regard to the distribution of this surplus among the state-members 'for the purpose of effecting adjustments in respect of any privilege or immunity of a financial character enjoyed by a state.'²

The constitution provides that federal legislation which in any way affects the revenues assigned to the units (under classes 2, 3 and 4 above) requires the previous consent of the Governor-General given in his discretion. The Governor-General will be directed in his Instrument of Instructions that before giving his assent, he should consult Federal and Provincial Ministers and the Governments of other units that may be affected, in the way best suitable to the circum-

¹ Joint Committee. Minutes of Evidence: Vol. II-B. Qs. 8160 to 8176.

² The Government of India Act. Sec. 149.

stances of the particular case. It may be expected that there will be many differences of opinion among the Ministers as to legislation on these taxes from time to time. The Federal Finance Minister, since he has the responsibility of introducing legislation with regard to these in the Federal Legislature, may be expected to wield great authority. In any case of federation *versus* provinces, it is doubtful whether he will always act impartially. The Governor-General, being an outside authority, may be expected to be impartial, and be able to interpret correctly as to the kind and extent of the agreement reached among them on a particular question. Here again, we see that the Governor-General will have to act from his exalted station as the *deus ex machina* to resolve deadlocks in the future Indian constitution!

What has become of the 'initial' and 'emergency' contributions proposed by the Peel Committee? It has been held that at least for a period of the first ten years, until the Federation would have been able to develop its new sources of revenue, some interim arrangements have to be made to fill in the federal deficit. The White Paper proposes that during the first three years, the Federation shall retain for its own use out of the provincial share of the incometax receipts a sum (to be fixed by Order in Council) which will be reduced by regular stages, until it is completely extinguished at the end of the period. A similar process of reduction and extinction will be followed also in the case of the tributes from the states. But this process of reduction in either case may be suspended by the Governor-General in his discretion, if circumstances make it necessary to do so in the interests of

the financial stability and credit of the Federation. The Joint Parliamentary Committee, while generally approving this plan, have however expressed the opinion that in view of the uncertain economic conditions at the present time, it is highly inconvenient to prescribe in advance in the Act itself a time-table for the process of reduction, and it would be much better to fix the actual periods, proposed in the White Paper to be 3 and 7 years, in the light of the circumstances at the time by the more flexible procedure of an Order in Council.

The 'emergency contributions' proposed by the Peel Committee are changed out of shape in the White Paper proposals. The Percy Committee have pointed out that purely emergency powers are insufficient to avert this danger; the powers required are for the *prevention* of emergencies. The emergency contributions are thus condemned. Instead, the Federal Government is given the power to impose a surcharge on incometax. But these surcharges, the representatives of the states have plainly declared, should be imposed only in a *grave emergency* after the Federal Government have done what all they could in balancing the budget both by reducing expenditure and by increasing the indirect taxation.¹ Here also, the Governor-General in his discretion would be the judge as to

¹ Sir Akbar Hydari's statement on behalf of the Indian States' Delegation made before the Joint Committee. Minutes of Evidence: Vol. II-B. Q. 8023. The Joint Committee have accepted these conditions as reasonable. One of the conditions is that *the allocation of the incometax proceeds to the federation should not be less than 50 per cent.* So, they have already provided against every possible emergency!

whether an emergency has arisen or not.¹ Thus, in the very last resort, the states agree to pay their share of the surcharge in the form of a contribution. But there may be some difficulty in calculating their share of the contribution as many of them may not have at the time any incometax legislation within their states. The relative taxable capacity, revenues and population are suggested in order of merit by the Percy Committee as the possible bases for the calculation of these contributions. The particular basis will be prescribed later on by Order in Council.

The 'Equity' of the Allocation as between Units

Everybody agrees to the principle that the federal scheme of finance should provide for an equitable distribution of burdens and benefits among the partners in federation. So far as the British Indian Provinces are concerned, this part of the scheme bears a close resemblance to the Layton scheme. The distribution of the incometax would benefit the industrial provinces like Bombay and Bengal.² The levy of the

¹ Sir Samuel Hoare thinks that the key to the whole position is the previous sanction of the Governor-General. If this has not been provided for in the White Paper, he would see that it is included in the Constitution Act. Minutes of Evidence: Qs. 8508, 8523, 8529. See the Government of India Act. Sec. 141 (2).

² The Percy Committee proposes that a part of it, viz., the estimated tax on the undistributed profits of companies and on the incomes of persons resident outside British India should be distributed among the provinces on the basis of population, and the rest according to the residence of the taxpayer. The distribution of part of the proceeds according to population 'would incidentally help, to some extent, the poorer provinces with large populations like Bihar and Orissa and the United Provinces.' (para 72). The provinces are not given even a limited right to levy surcharges on the incometax, (as was originally proposed) since the Joint Committee have declared themselves not in favour of it.

terminal taxes would benefit Assam and Bihar. The taxation of agricultural incomes would remedy some of the defects of the permanent settlement in Bengal and Bihar; it would also benefit Assam, which has large tea-plantations. A special provision giving at least 50 per cent of the export duty on jute to Bengal has been included on the suggestion of the Federal Finance Committee of the third R. T. C. This would certainly make the finances of Bengal easy, and perhaps obviate the necessity of imposing a tax on agricultural incomes.

Special provisions are also included in the constitution for the payment of subventions from federal revenues to certain provinces, which would still be in deficit. The Federal Finance Committee of the third R. T. C. contemplate *'that the amount would only be just sufficient to enable a province exactly to balance, on a basis of providing for bare necessities.'* The North West Frontier province, on account of its exceptional position connected with the defence of the country, would receive as now a subvention,¹ and in this case, the contribution would certainly be permanent. There are new provinces like Sind and Orissa, who cannot stand upon their own legs for a time at least. According to the Secretary of State's statement at the third R. T. C., 'there is likely to be an initial deficit on the administration of Sind amounting to 3¼ crore, which would be extinguished in about

¹ Professor Chabiani criticises that no definite principle has been enunciated by the Indian Legislature in granting the contribution to the N. W. F. P., and that the standard of expenditure on all services in this province is much higher than in many others. Cf. 'Federal Finance and Small Governors' Provinces' in the *Indian Journal of Economics*, October, 1932.

15 years.' In the case of Orissa, it has been calculated that the initial deficit would be 28½ lakhs and the ultimate deficit 35 lakhs. According to the O'Donnell (Orissa) Committee, this deficit cannot be met by any additional taxation in the province itself. The federal subvention will therefore have to be permanent. Assam is another deficit province which may also require a permanent contribution from the centre. The Percy Committee have drawn attention to the comparatively undeveloped position of Assam and to the possibility that 'it could be made self-supporting in the future by a well-considered programme of development and land settlement financed by federal loans.' In all these cases, the exact amount of the subvention as well as the time for which such assistance should be given would be settled after an expert enquiry into the peculiar conditions of each of them, just before the inauguration of the Federation, and these would be prescribed by Order in Council, which could not be altered in any way by the Federal Government. But except in the case of the N. W. F. Province, none of these subventions shall be increased even by a subsequent Order in Council except upon an address agreed to by both the Houses of the Federal Legislature.¹

The Indian States

In accordance with the recommendation of the Peel Committee, an expert committee presided over by the Right Hon. Mr. Davidson has gone into the whole question of the relations of the Indian States

¹ See the Government of India Act. Sec. 142.

with the Federation. They have examined the origin of the tributes and expressed the opinion that they are not feudal in their nature as the Peel Committee supposed them to be, but were imposed on the various states in return for military guarantees. They are however very unequal in their incidence, and so should have no permanent place in the future Indian Federation, in which all the partners may be expected to share benefits and burdens equally. They have also found that 'ceded territories' are similar to the tributes in their origin, and therefore it is reasonable either to restore the territories to the states concerned, or at least pay some compensation for them. It is true that these territories are not yielding any surplus over and above the expenses which the governments in British India are incurring for them, but one has to take also the other side of the case made out by the states that this is due to the nature of the government and administration in British India, and if these territories are restored to them, they could certainly be made to yield a decent surplus. In view of these considerations, the Davidson Committee have recommended that those states who ceded territories in the past, should be paid compensation by the Federal Government, and the net value of the territories as estimated at the time of cession may be taken as a just basis for such compensation.

The Davidson Committee have also gone at length into the various kinds of 'immunities' which several states enjoy with respect of certain prospective sources of federal revenue, viz., salt, sea customs, posts and telegraphs, coinage etc., and have made recommendations for the buying up of these immunities by the

Federation in the interests of uniformity. With regard to customs, however, which is a very important item, they have found great reluctance on the part of the Maritime states and Kashmir to surrender their rights even for a compensation. That this attitude may not prevent these states from entering the Federation, the Committee have recommended a compromise arrangement, according to which the Maritime states, on becoming members of the Federation, may be still allowed to retain the duties on goods imported through their own ports for consumption by their own subjects. Anything over and above this should go to the Federation.

The Davidson Committee have recommended that the tributes and the value of the ceded territories should be set off against the various 'privileges and immunities' which the states possess. The tribute of any state should be extinguished, or compensation for any ceded territory allowed for, *only* to the extent that these exceed the value of the immunities. British India may like to see that the tributes of the states as a whole may be set off against their immunities as a whole. But this is not practicable. The states are not a collective entity. Therefore, there are bound to be some anomalies in the arrangement proposed. Some states may possess no immunities at all, but pay only tributes and in this case they enjoy fully the gain from the extinction of these payments. On the other hand, there may be some states who possess only immunities and who do not pay any tributes, and in that case they enjoy fully the compensation that may be paid to them in return for the relinquishment of these immunities. The arrangement recommended by the Committee

therefore is not a logical one, but the only practicable one under the circumstances.

There are thus, it is clear, great inequalities as between states. But there are also inequalities as between British India and the states. Even if we keep out of our consideration the period of the first ten or fifteen years during which the Provinces pay contributions in the nature of the incometax proceeds retained by the Federation, while the States would not only be exempt even from the corporation tax, but would be gradually relieved of the payment of their tributes, there is the permanent anomaly in that the Federal Government would be given a fixed percentage in the yield of the incometax from British India only, while the states would (except for the corporation tax) be exempt from it.¹ They have no doubt agreed to contribute to a federal surcharge on incometax, but this should be imposed only in an emergency,—and they have taken sufficient precautions against an emergency arising at all! This is bound to lead to much heart-burning in British India. Even though we have criticised the Peel Committee for proposing complete provincialization of the incometax, we ought to know that they were forced into a mistaken policy by this obvious difficulty. 'On any other basis' they say, 'it will be impossible to secure even ultimately, a uni-

¹ There is a minor anomaly which arises in giving the Federal Government the right to make surcharges to a number of taxes levied by it for the benefit of the provinces. (See class 4 in the table of allocation). It is better that these 'central' subjects are made federal in the interests of uniformity, let alone the anomaly referred to above. As the proceeds go to the states, there should be no difficulty in their agreeing to federal legislation in those subjects.

formity of federal burdens as between the provinces and the federating states, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation."¹ It is but right, that if the Federation needs for its solvency a part of the incometax proceeds, the states should also contribute their share of the burden.

It is arguable that the Indian States as a whole are far behind British India in economic development, they are much poorer than British India, and they may therefore be considered as occupying a position in the Federation analogous to the deficit provinces. In that case, their privileges, as for example, their exemption from the incometax may be justifiable as being not very different in nature from the 'federal aid'

¹ In this connection, we may note certain interesting points made out in the cross-examination of the Secretary of State by Dr. Ambedkar before the Joint Committee. Vol. II-B. Qs. 8640-42. Dr. Ambedkar seems to think that 'the Federation would have to build a tariff wall round itself in order to carry on.' The states do not come in under the incometax, and the British Indians would not like to raise the rate of the tax, since that would benefit the Federation at their expense alone. So both the states and British India would go in for indirect taxation. The Secretary of State points out that *in this triangle of forces, the provinces will have an interest in the raising of the rate, as they have only a definite share in it*, (which is fixed permanently and which cannot be increased even by a subsequent Order in Council). Dr. Ambedkar answers that 'the provinces also will see that the Federation is not entirely a charge on Indian revenue raised in British India.' This may have been possible to some extent, if the provinces could levy surcharges even to a limited extent as proposed in the White Paper. And this is perhaps one of the reasons why the Joint Committee have declared themselves not in favour of provincial surcharges. Therefore, as the Secretary of State thinks, the urge for an increase in the incometax rate would certainly come from the provinces, who have to look more to their immediate and urgent needs than to the indirect effects of their proposals. Anyhow, it is clear that this would lead to much friction between the states and British India.

which these provinces would receive. The argument may be further pressed to justify the lack of uniformity as between the states themselves. The 'immunities' that many of them enjoy may be considered as so many 'subventions' granted to them. Without these immunities indeed, a good many of them could not exist as separate political entities. This only demonstrates, if at all, that the states, much more than even the provinces, have come into existence in a most haphazard manner, and that they are not suitable units from a fiscal point of view. But this does not in any way invalidate their claim for special consideration.

The argument is specious to a degree. The privileges that these states enjoy either as a collective unit in relation to British India, or as separate units as between themselves and British Indian provinces do not bear any close relation to the functions that they discharge. We cannot say that much of the prejudice that exists in British India against these 'privileges' and 'immunities' of the states is unjustified, mainly for two reasons. First of all, the states are all autocratic, and any advantages that may be conceded to them are not given to the peoples of the states, but to their Rulers only. We cannot be certain how far, if at all, these Rulers would employ these 'subventions' for the development of beneficent services in their states, as the provinces would certainly do. Secondly, these 'immunities' bear no relation to the financial position or 'the relative taxable capacity' of the various states. The subventions to deficit provinces are given after careful investigation into their real needs

cannot be done in the case of these various states. Why should the bigger states like Mysore, Hyderabad or Kashmir be exempt from the federal incometax? The above argument cannot be used as against their sharing *uniformly* their share of federal burdens as with other units. Uniformity must first be secured. Equalization of burdens should come only after. And here again, the scientific basis for these 'subventions,' as the subventions given to deficit provinces, should be the real minimum needs of the states concerned, and not their accidental possession of immunities.

Public Debt and Borrowing

During the preliminary discussions in the Federal Structure Committee, on federal finance, it was generally thought that the pre-federation debt would have to be one of the 'central subjects,' as the states could not be held responsible for it. But the Peel Committee expressed the opinion that it might be that the whole of the Public debt of India was really covered by assets, if these were capitalised at the current rate of interest. The Percy Committee have gone into the whole question and in view of the great value of the productive assets as well as other assets in the shape of government buildings and property which the Government of India holds as against the liabilities, they have recommended that the burden of the pre-federation debt may be safely assumed by the Federation as a whole.

As regards the borrowing powers, the Peel Committee proposed to give complete freedom to the provinces in 'internal' borrowing, but expressed the opinion that it would be highly desirable to secure co-

ordination between federal and provincial borrowings, and some kind of machinery for the purpose ought to be set up. They were however emphatic that this freedom should not be extended to borrowing outside India. In the interests of the general credit of the Federation, the provinces should not be allowed to borrow outside the country without the permission of the Federal Government.

The Percy Committee, who have examined the whole question, recommend that the Provincial Loans Fund from which the provinces at present borrow may well become a Federal Loans Fund in the future. In that case, all the units—the provinces as well as the states—should have the right to apply to the Federal Government for the loans they require, and the Federal Government would grant the loans if it is satisfied with the security they offer. But so long as a Provincial Government has any loan outstanding with the Federal Government, it should not be allowed to raise a new loan in the market without the permission of the Federal Government.

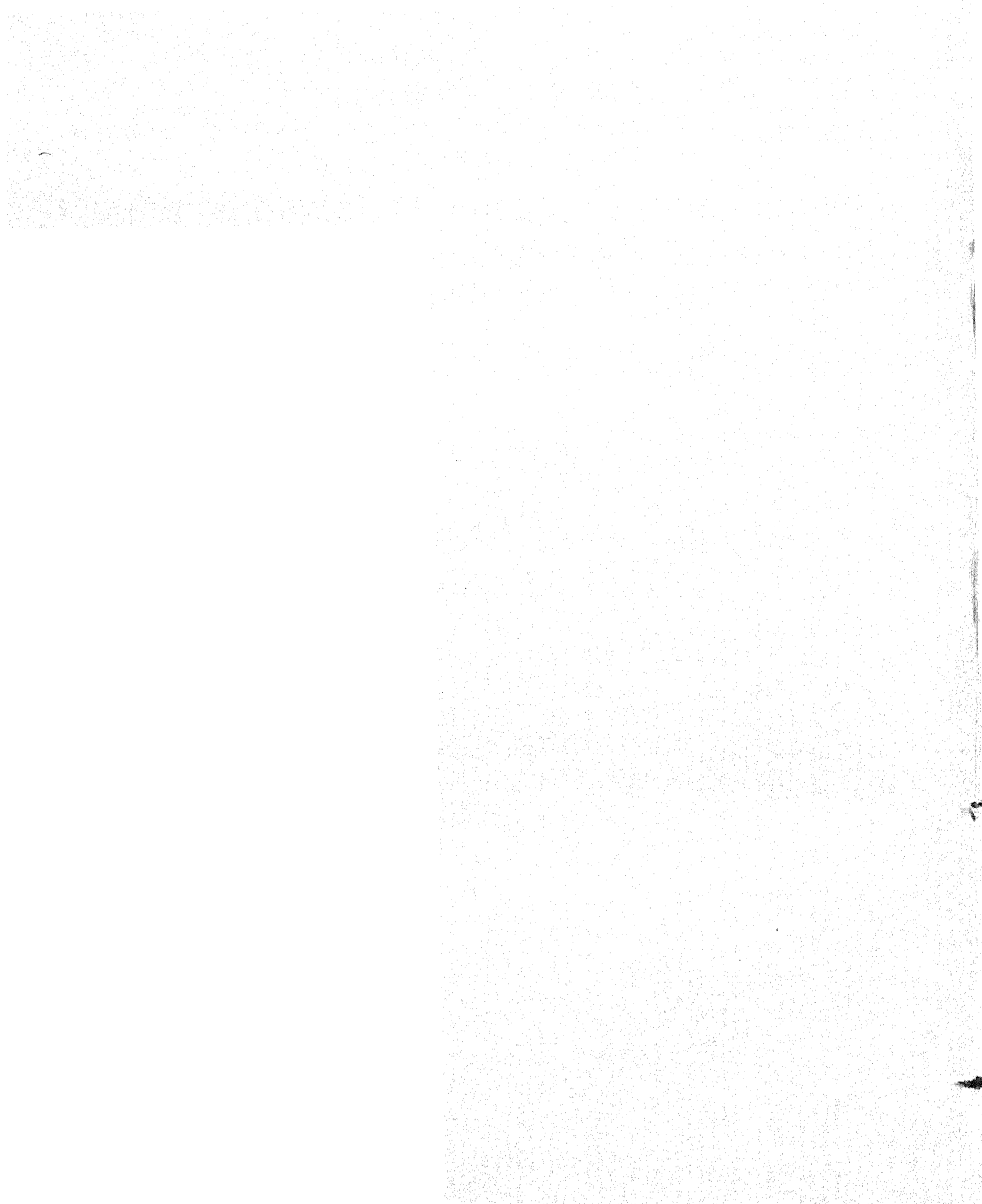
The Committee have also considered the desirability of securing co-ordination between the loan policies of the various units. There must be a body to see that there are no excessive or conflicting applications for loans made to the Federal Government. This function may be entrusted to an inter-state council. This would only be an advisory body, without any power over the borrowing operations of the Federal Government and without any authority to raise loans on behalf of any government. The Percy Committee recommend also the setting up of an expert and impartial body of loan commissioners, whose duty would

be to give advice to the Federal Government in granting the loan applications of the units and in giving them permission to borrow directly from the market. In all those matters falling within the competence of either of these two bodies, the final decision should rest completely with the Federal Government itself. The Joint Committee point out that this puts great power in the hands of the Federal Ministry who may abuse that power by insisting upon unreasonable conditions! So, they say, this power of the Federal Government must be subject to the discretionary intervention of the Governor-General to set right any injustice done to a unit.¹

¹ The Government of India Act. Sec. 163 (4).

PART III

**THE NATURE AND VALUE OF THE
FEDERAL SCHEME**



CHAPTER VI

THE STRUCTURE OF THE FEDERAL GOVERNMENT

(i) *The Legislature*

'The very fact that you have got to create special constituencies, the very fact that you have got to give weightage to different minorities, the very fact that the Indian States want weightage, means that it cannot be purely democratic, and therefore I would like to get away from this democratic ideal as a basis.'

—Mr. Gavin Jones at the *Federal Structure Committee* (1st Session p. 123)

The Nature of the Problem

THE Indian Federation is a unique piece of political architecture. It combines in itself the two principles of territorial and social federations. The territorial aspect of the federation is complicated by the lack of political homogeneity between the federating units. The Indian States are autocratic and the British Indian Provinces are democratic. These two sections, representing antagonistic principles, will have to rub their shoulders in apparent friendliness in the federal framework of our future Government. The social aspect of the federation is again of an unprecedented character. The rivalry between the English and the French in Canada during the first half of the 19th century may indeed be cited as a precedent, but the resemblance is only partial. There, the social aspect has been merged in the territorial aspect. There is no separate system of group representation for the French in the legislatures of Canada, as there is for

the Muslims in India. Besides the religious cleavage between the Muslims and the Hindus, there are social divisions among the various sections in the Hindu community itself, especially between the caste Hindus and the Depressed classes. It is thus at once a federation of territorial units, autocratic and democratic, and of antagonistic communities, religious and social. And it is under these conditions that democracy is being introduced into India for the first time in her history. But India has not been prepared for her destiny. Her political, social and economic conditions are still medieval. She has not had the good services of that harbinger of democracy — an 'enlightened' dictatorship, which is a necessary stage through which every democratic country in Western Europe has passed through in modern times. The huge population covering about one-fifth of the human race, the gross ignorance and the abject poverty of the masses, the vividness of religious dissensions, the lack of social solidarity, the presence of the alien in the land—all make the democratic experiment in the Indian Federation one of utmost difficulty and uncertainty.

The very complexity of the phenomena, however, throws into clear light the real nature and importance of certain questions which occupy a large space in the general theory of federalism. What is the meaning of the representation of units as units in the Federal Government? Should there be 'equality' in such representation among the various federating units? Is there any necessity, after all, for such 'state' representation in the Federal sphere—or, in other words, for any 'Federal' Second Chamber? In and through all these questions run the prejudices and preposses-

sions, the suspicions and fears, the hopes and aspirations of the different parties to the Federation.

The Component Elements of the Federation

That there should have been discussion on the component elements of the Federation shows the essentially different nature of the Indian Federation from all the other federations known to us at the present time. The question really comes to this—is it necessary that there should be a certain amount of equality among the federating units? British India at the present time is one unitary state, and it is much bigger in its area, resources and population than all the Indian States put together. It comprises an area of about 820,000 square miles with 260,000,000 of population, whereas the Indian States have an area of about 700,000 square miles with 80,000,000 of population. But the Indian States are not one single unit. They number more than 500, and they differ from one another widely in their status, size, resources and population.¹ The question is complicated by the fact that the one is trying to secure democratic self-government for itself, while the other has in it prevailing some form of personal government. The Indian Princes fear that the preponderance of the democratic element in the Federal Government would react on their position and the internal character of their governments, whereas the British Indians are afraid that the preponderance of the autocratic element would mean a negation of democracy,

¹ See Appendix II for a classification of the Indian States according to these criteria.

as it would give the people of India the semblance of power without its substance. Each party is suspicious of the real intentions of the other. 'We have really something at the back of our minds,' said Mr. Srinivasa Sastri during the discussion at the Round Table Conference, 'and therefore seem to be saying things of which the meanings clear in our own minds are not quite clear to others.'¹

The Indian States' Delegation made it clear that they would not come into the Federation unless British India is split up into a number of autonomous Provinces. His Highness the Nawab of Bhopal said: 'A state will find it very difficult to come into a Federation if British India existed as a solid unit, as it is to-day. It may like to come into a Federation if British India was also federated, but it would not come in against a three-fourths vote in a solid body. That would mean that we would have a bloc of votes always dominating us, and we do not want any further domination.'² They do not want that British India should occupy in the future Indian Federation a place analogous to that which Prussia occupied in the pre-war German Federation. For a similar reason, the idea that a 'Confederation' of the Indian States should federate with a 'federated' British India³ has not com-

¹ Federal Structure Committee (1st Session) p. 49.

² *Ibid*: p. 47. The Chairman of the Committee interpreted him thus: 'You would come in provided that the objection which you have just mentioned could be in some way safeguarded? Would it be safeguarded in this sort of way—either by (1) adequate representation, or (2) instead of a bloc of British India always voting one way, the individual Provinces?' The Indian Princes demanded and secured both the alternatives suggested.

³ The idea was broached during the Second Session of the R. T. C. by the Maharaj Rana of Dholpur. Cf. Federal Structure Committee Proceedings (2nd Session) pp. 131-133, and Appendix VI: pp. 518-519.

mended itself to the British Indian politicians and even to many of the bigger Indian States, as its ultimate effect would be to range the two sections in opposition against each other. The Federation therefore is not to be between British India as one unit and the Indian States as another unit, but between individual autonomous British Indian Provinces on the one side, and individual states or groups of states (each too small for effective representation individually) on the other. This would remove all suspicion and distrust in the minds of either that the other would dominate over them for ever.

The question which was uppermost in the mind of every one during the discussion was this—on what lines would the voting in the Federal Legislature be likely to go? Would it ever be Indian States *versus* British India? Very rarely, if at all. The Maharaja of Bikanir envisaged such a possibility only in two cases: (a) if there was a proposal to break away from the empire, and (b) if the very existence of the states were threatened or their powers and privileges encroached upon. But these are, according to him, beyond the ken of practical politics.¹ In all other cases, there could be no conflict of interests between the two. The subjects entrusted to the Federal Legislature are not such as would affect the autocratic Indian States in one way and the democratic British Indian Provinces quite in another way. They are all economic questions of all-India interest, and they affect equally the people in both. The affiliations may well be

¹ Federal Structure Committee (1st Session) p. 236.

Federal Structure Committee (2nd Session) P. 109.

regional, and the Indian States are not in any one economic section of the country. This is certainly the experience of the United States, where the Federal Legislature is divided on 'sectional' or regional lines.¹ On the tariff policy of India, for instance, the representatives of the Madras Presidency and the delegates of Mysore and Travancore may vote together against the representatives of the Bombay Presidency and the Indian States in that region. There is also one other thing which must have reassured the Indian States. The British Indian side of the Federal Legislature would be split up into a number of groups, representing different communities and interests, who therefore could not act as a solid bloc against the Indian States. On the other hand, it is highly possible that in between these various groups, the Indian States may become a 'balancing' and 'stabilising' factor in the Federal Legislature.

Weightage to the Indian States

But the Indian Princes were not content with such congenial reflections. Even though the Indian States as a whole comprise only 45 per cent of the area and 24 per cent of the population of the whole of India, they demanded 50 per cent representation in the Upper House and 40 per cent representation in the Lower House of the Federal Legislature. They argued

¹ Munro: *The Invisible Government* Chap. VI: 'Our strengthening Sectionalism' is instructive. 'The political philosophers have told the world that the American Senate represents the States, while the House of Representatives does similar service for the people; but in reality both chambers reflect the opinions and desires of the *regions* from which their members come' pp. 137-138. See also Herman Finer: *The Theory and Practice of Modern Government* pp. 291, 295.

that equality of representation was given to the units, irrespective of their area and population in the Second Chamber in almost all the federations, and that even in the German Empire, where this was not observed, Prussia with two-thirds area and three-fifths population had only 17 votes out of 58 in the Bundesrat. But one may wonder why they want weightage in the Lower House, seeing that in every federation—not even excepting the pre-war German Federation—it is constructed on a population basis. The Nawab of Bhopal put forward a very interesting argument—one on which, it seems, their claim to weightage in either chamber can more reasonably be sustained. ‘An important question that you will find among your discussions’ he said ‘is that other important interests are claiming weightage, and if they get their weightage, I think we also are important enough to claim some weightage.’¹

The British Indian Delegates pointed out the impossibility of applying ‘the equality of representation’ argument to the case of the units in the Indian Federation. If there should be equality among the component units, argued Mr. Srinivasa Sastri,² then we should not divide the component units into two main classes and say that each class should have parity of representation. It is only among the units that this equality is to be found in other federations. The Indian States are not one unit. They come into the federation individually on separate terms and at different times. The Bikanir Maharaja’s reply that the

¹ Federal Structure Committee (1st Session) p. 107.

² *Ibid*: p. 108.

Indian States have sovereignty, while the British Indian Provinces have not, does not carry us very far, for, in the first place, there are varying degrees of the so-called 'sovereignty' among the states, and secondly, where there are great inequalities in size, 'resources and population between one unit and another, this principle is inapplicable, as it was found inapplicable in the German Imperial Federation. Sir Tej Bahadur Sapru, however, took his stand not on any principle or precedent, but on political expediency. 'The question as I approach it' he said, 'is one of sheer political expediency and nothing more than that.' It is precisely in this argument that every statesman must have taken refuge in conceding weightage to the smaller states in the Second Chamber in almost all the federations. There is indeed no valid reason for such weightage other than the necessity for a compromise on a question on which there has been so much of loose thinking. Sir Tej Bahadur Sapru went on to explain his position thus: 'If we are inviting the Indian States to come and join the Federation, or if they want to join the Federation themselves, then there is no doubt that we are bringing into existence a political body whose laws will be as much binding upon British India as upon the Indian States which will join that Federation. That to my mind is a very important factor, and when one remembers that the Indian States have hitherto refused to have any dealings with the Indian Legislature, and they have run on their own lines, and they are now willing to come into the federation, although that federation may be of a limited character, I think that that is a factor which should affect our minds a great deal in arriving at any conclusion.

I would also take into consideration the possibilities of the development of this federation in future.¹ In other words, he was willing to give weightage to the Indian States as an inducement for them to join the Federation, and as a means whereby their fears and prejudices might be overcome, so that in course of time they would willingly agree to all the implications involved in a federal scheme of government. Therefore, he said that he was prepared to give them representation to the extent of 40 per cent in the Upper House and 33½ per cent in the Lower House, even though on the population basis they were not entitled to more than 24 per cent.

The Muslim Group of the British Indian Delegates were not however willing to give any weightage to the Indian States. The argument advanced in support of their view by Chaudri Sahib Zafrullah Khan goes to the very root of the whole question. Their Highnesses were certainly right, he said,² in insisting upon certain matters being guaranteed and secured to them—matters pertaining to sovereignty, succession, dynastic questions, their Treaty rights and their internal autonomy. As these would be excluded from the purview of the Federal Government, Their Highnesses need have no fear of any Federal encroachment on their internal autonomy. Only those matters which are of common interest to British India and Indian India would be entrusted to the Federation. Such being the case, was there any basis for their fears that unless they secured weightage, they would find them-

¹ *Ibid*: p. 110.

² Federal Structure Committee Proceedings (2nd Session) pp. 124-125.

selves always in an ineffective minority in the Federal Legislature? 'If British India were coming into the Federation as one unit—if British India as one entity had common interests which might under some possible circumstances come into clash with the common interests of the states among themselves—if British India had one separate culture and the states another—if British India were inhabited by one race and the states by another race—if the people of British India were the adherents of one faith and the people of the Indian States of another faith—if there were any such cleavage or division between British India as a whole on the one side and the Indian States as a whole on the other—these would have been the strongest reasons for Their Highnesses insisting that, being the smaller partner in the federation, they should be given a certain amount of weightage.' But as Their Highnesses themselves recognised, very often the question of voting would be decided on the ground of regional distribution rather than the question of the yellow or the red colour on the map. So there was no case made out for weightage to the Indian States. The argument, it may be noted, cuts both ways. As Sir Tej Bahadur Sapru hinted at,¹ it may be argued with equal justice and reason that there is no case made out for weightage to the Muslims in the Federal Legislature. The Federation itself, as we have seen elsewhere, is a big safeguard for their religious and cultural interests. All those matters which concern their religion and cul-

¹ *Ibid.*: P. 135. 'It came to me as a surprise that my friends over there should have lost faith in weightage.... But while it was being argued that the Indian States should not have weightage in the Upper House, I wondered where that argument would lead to in another Committee.'

ture most intimately are in the provincial sphere. The matters entrusted to the Federal Legislature are not sectional in character, but are of all-India interest. The policy of the Central Government in any of those subjects, e.g. defence, tariffs, currency and communications, does not affect the Muslim citizen in one way and his Hindu neighbour in another way. Why is it then the Muslims adopted such a democratic attitude *vis-a-vis* the Indian States? The reason is not far to seek. If any weightage is given to the Indian States, it will be at the expense of British India as a whole, and hence at their expense as well. As they demand for themselves at least one-third of the British Indian seats in the central legislature, they are afraid that this would reduce their quantum of representation in that proportion. They certainly have no objection, if weightage to the Indian States (who are predominantly Hindu) were given at the expense of the Hindus alone in British India.¹ One important conclusion emerges out of all this discussion. Weightage to the Indian States or to the Muslims is not necessary to safeguard their peculiar interests and hence is not a fundamental element of federalism. It is conceded however, here as elsewhere, to satisfy their jealous and perhaps unreasonable sentiment, fear or ambition that otherwise they would lose that special

¹ See Memorandum on the 'Muslim Position in the Centre' presented to the Third R. T. C. pp. 190-91. It may be noted that the Muslims demand one-third representation of the *total* house in each of the two chambers of the Federal Legislature. In answer to a question put by Mr. Zafrullah Khan, the Secretary of State replied that he had impressed upon the Indian States' representatives the advisability of keeping a fair balance between the communities and he found them very sympathetic to the idea. (Minutes of Evidence: Q. 7816.)

character and position which each desire to maintain somehow even in national politics.

Bicameralism Another Compromise

The Conservatives, British and Indian, would have liked to see established at the centre a kind of government similar to that which existed in pre-war Germany. They all preferred a small compact single chamber 'legislature-executive' like the German Bundesrat, and if there were a strong demand for two chambers, they were willing to give an indirectly elected, ineffective Reichstag. This is because, said Mr. Gavin Jones, the conditions in India are so similar to what they were in Germany—'that is to say, that a number of autocratic states were persuaded to join the federation, and the only way they could be persuaded to join was when it was made clear to them that they would not be dominated by a popular chamber.'¹ Sir Samuel Hoare 'from start to finish' was doubtful of the wisdom of applying the 'British House of Commons system to an All-India Federation.'² His view was coloured by his close study of the Report of the Indian Statutory Commission and by the honest opinion thereafter held that it was impossible to introduce the British type of responsible government into the Federal centre under the peculiar conditions existing in India. The German Bundesrat appeared to him as a way out of all these difficulties. Sir Mirza Ismail advocated it because of the failure of the Senate to safeguard 'state' interests under a responsi-

¹ Federal Structure Committee (1st Session) p. 103.

² *Ibid*: p. 178.

ble form of Government. He drew the attention of his colleagues to the experience of Australia—how they came to realise in that country the vital importance of close co-operation and concerted action on the part of the governments of the federated units in all matters in which the country as a whole was interested, and how on account of the failure of the Senate—a failure inherent in its composition—they were forced to evolve an extra-constitutional body known as the Premiers' Conference to secure that end. This experience clearly pointed out the necessity of the representation of the Governments of the units in the Federal Legislature.¹

Sir Akbar Hydari, until the very last, was a staunch supporter of the 'confederal' single-chamber idea. He was influenced into that view by the very nature of the Indian Federation—'a federation of autocratic states and democratic states.' His very first proposition therefore was that the Federal Legislature should be constructed with reference to the component elements of that federation and without any reference to the form of government prevailing in them. This meant to him that the Federal Legislature should be made up of the representatives of the governments of the federating units. Such a body, he argued, could not be called anti-democratic from the point of view of British India, as the governments of the Provinces would be fully responsible to their

¹ Federal Structure Committee (2nd Session) p. 321 and Appendix VIII on pp. 521-522. Also see Joint Committee—Minutes of Evidence: Vol. II-B, Qs. 7524-33. Sir Mirza would give only a suspensory veto in legislation to the Upper House—'The Federal Council,' which thus resembles the Reichstrat of the Weimar constitution.

democratic legislatures, and as all those matters which most concerned the people would be within the purview of the Provincial Legislatures. And what were the kind and importance of the subjects which would be within the Federal sphere? These were comparatively few in number, largely administrative and very technical in nature, such as tariffs, coinage and currency, transport etc. 'It would therefore seem to be both simpler and more economical, without detracting in any way from its Indian and democratic character, to have these federal subjects brought within the purview of one chamber representing the governments of the federating units, like the old German Bundesrat.' Sir Akbar had another peculiar view of the nature of these federal subjects. It was but natural for one who implicitly believed in the famous maxim *L'état C'est moi* to hold that legislation in these federal subjects would affect the units 'as whole units' and the people of those units, if at all, only indirectly. 'A federal unit like Bombay or Madras or Hyderabad will have to examine such legislation from the point of view of its effect on the unit as a whole, the interests of the individual inhabitants of Madras, Bombay or Hyderabad being subsidiary to and dependent on the interests of the unit to which they may happen to belong.'¹ And therefore, he would say, such legislation must be passed by those units assembled together in the Federal Legislature.

The British Indian radicals—Mr. Joshi, Dr. Ambedkar, Mahatma Gandhi, and in the wake of the last, Mr. Rangaswami Iyengar—agreed with the con-

¹ Federal Structure Committee (2nd Session) pp. 94-95.

servatives that a single chamber legislature was in every way preferable to a bi-cameral one, as it was simpler, less expensive and more efficient, and as it avoided the conflicts and deadlocks inherent in the two-chamber system. 'I am certainly not enamoured of and I do not swear by the two Houses of Legislature' declared Mahatma Gandhi. 'I have no fear of a popular legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang, the popular legislature. I think that a popular legislature can take care of itself..... I do not for one moment endorse the idea that, unless we have an upper chamber to exercise some control over the popular chamber, the popular chamber will ruin the country.'¹ Dr. Ambedkar roundly declared that a second chamber representing the units was not at all a fundamental element of federalism—'This has nothing to do with the form of the government, whether it was unitary or federal.'² These were however willing to agree to a second chamber as a compromise—but only 'if the fangs of the second chamber could be clipped by proper safeguards so that it could be made safe for a democratic government in India.'

The British Indian democrats—Liberals and Muslims—declared themselves in favour of the two-chamber system of the traditional Federal type. A system of government like that of pre-war Germany did not commend itself to them, mainly it seems, on account of its association with an autocratic regime—and also because of the fear of the Muslims that it

¹ *Ibid*: p. 60.

² *Ibid*: p. 100.

would not secure their quota of one-third representation in the Upper House. The long-cherished desire of the British Indians is to secure for India the traditional British and Dominion type of responsible government and not the German form of 'non-responsible' and possibly irresponsible government. Sir Tej Bahadur Sapru declared that they were not contemplating, as Mr. Gavin Jones said that morning, a federation of autocratic states. 'If that is what is being contemplated, frankly I tell Mr. Gavin Jones that he will not have a single Indian to look at it, nor do I think will the Indian States be prepared to join it.'¹ Neither would they agree with Sir Akbar Hydari that the federal subjects intimately affected the units as 'whole units' and only indirectly the people. In their view, the subjects delegated to the Federal Legislature would affect the daily life of the masses very intimately and hence would arouse great and widespread interest among the people; the Provincial Governments, constituted for the administration of provincial subjects, were not necessarily fitted on that account to legislate on and administer these All-India subjects; it was clearly necessary to have a different type of men to handle this different category of subjects; and these men should always have to be in touch with the organised and educated public opinion of the country in relation to those subjects. All this meant that at least one chamber should be so constituted as to directly represent the people as a whole.

The Liberals and the Muslims occupied the centre as between the two extremes. They advocated a legis-

¹ Federal Structure Committee (1st Session) p. 109.

lature of two houses because it was the case in other federations. Just as in other federations, they also would have one chamber to represent the units and another to represent the people. It was moreover a compromise between the two opposing views, even though they did not seem to have grasped this fact. It is precisely in this way, we may note, that second chambers came into existence in all the federations.¹ As was the question of weightage, so was the question of the two chambers, 'one of sheer political expediency and nothing more than that.' Here also, as there, the Liberals looked to the future and left to time and association much of the development of the federation. Thus, it could not be expected, for instance, at the outset, to get the representatives of the states to the lower chamber elected by the people, as would be the case in British India. They therefore made an appeal to Their Highnesses to see that their representatives to the lower chamber would bear as far as possible more or less the same character as their brethren from British India. And they felt satisfied as making a beginning in that direction when Their Highnesses the Maharaja of Bikanir and the Nawab of Bhopal promised to give their legislative assemblies 'a voice' in the selection of their representatives. This, of course, did not amount to much, but yet this was the thin end of the wedge. This certainly would not have been possible, if there were only a single chamber.

That a second chamber has nothing to do with the

¹ But the genesis of course is a different question altogether from the *raison d'être* of such an institution as a fundamental element of Federalism. Cf. Prof. Venkatarangaiya's *Federalism in Government*, Chap. II, Sec. (2).

form of government, federal or unitary, was made clear in the argument advanced by Sir Muhammad Shafi for the retention of the present Council of State in the future Federal constitution. He pointed out that the Council of State exercised a steadying influence on the working of our legislative machinery under the 1919 Reforms. If there had been only a single-chamber legislature, as advocated by the radicals, the Swarajist party which entered the legislatures with the professed object of non-co-operating from within, would have succeeded in smashing up the legislative machinery. Who could be bold enough to say that this history would not repeat itself? 'We are all aware that the left wing of the Congress party consists of advocates of complete independence, some of whom openly profess communistic beliefs, led by a very sincere, very conscientious, but very enthusiastic professed communist. May it not be that, if a single chamber forms an integral part of our new constitution, a similar catastrophic crisis may arise in the future when, in that single chamber, this section of our Indian politicians may occupy the same position as the Swarajist party did in the Second Legislative Assembly, with the result that the whole of our constitution might be destroyed as a result of their action?'¹ The second chamber, in Sir Muhammad Shafi's view, was therefore necessary as a bulwark against the probable Congress attacks on the new constitution and as a safeguard against a possible communist dictatorship in India.

The majority of the Indian Princes also were in

¹ Federal Structure Committee (2nd Session) p. 78.

favour of a bi-cameral legislature on account of its obvious convenience for the representation of the states. Their Highnesses the Maharaja of Bikanir and the Nawab of Bhopal were not in favour of a small single chamber legislature as was advocated by Sir Akbar Hydari. They pointed out that there was a feeling abroad that the bigger states did not sufficiently care for the interests of the smaller states, and that a small single chamber where these could not be individually represented might give colour to such a feeling and would profoundly disappoint them. Even if the single chamber were sufficiently enlarged to meet the wishes of the smaller states, the difficulty was not yet over. For, what was then to be the basis of their representation? Neither the principle of population or area on the one hand, nor the principle of status as indicated by the gun-salutes on the other was an infallible guide through this tangled problem. If one were to proceed on the mere basis of population in such an apportionment, he would involve himself in inextricable complications and in the most frightful anomalies. Udaipur, for instance, would receive on this basis only half the number of the seats to which Jaipur would be entitled—'a position of inferiority which,' according to the Maharaja of Bikanir, 'it would be impossible to conceive that Udaipur would ever accept.'¹ Again, Mayurbhanj, the latest to secure individual representation in the Chamber of Princes and therefore the last (i.e., 109th) member according to its status, would on this basis come 17th in the list!—a frightful anomaly which would certainly lead to

¹ *Ibid*: p. 130.

much heart-burning among the smaller states with greater political importance. But if there were two chambers, the one based on the principle of population and the other on the principle of sovereign status and historical importance, that would certainly satisfy all the states concerned.¹

*The Methods of Representation to the
Legislature*

There has been a great deal of controversy as to the methods of representation to the two chambers. The Simon Commission proposed that the lower chamber which they called the Federal Assembly should be elected by Provincial Councils. Lord Peel and Sir Samuel Hoare supported this proposal, amplifying the arguments given in its support. Their argument ran thus: 'if you do want to secure the close touch between the voter and his representative which is the very essence of representative government, you will have to create an unwieldy and unmanageable House; and if you want a small compact, workable House of Assembly, certainly you cannot maintain that close contact between the elector and the elected.' The Simon Commission proposed that the British India side of the Assembly should consist of about 250 or 280 members, and they also said that with the advent of the Indian States into the federation this might grow to between 300 and 400. Beyond this number, they could not go. 'Too large a body at the centre would mean either that effective work would be impossible owing to prolonged debate or that a large

¹ See Appendix III (3).

proportion of members would have little to do but to pass through the division lobbies.' They also pointed out that the work done by the House of Commons at Westminster was being divided in India between the Federal Assembly and the Provincial Councils, and they argued therefrom that 'an unduly large body at the centre might tend to deplete the provincial councils of experienced public men, or might result in a lower standard of ability in the Federal Assembly.'¹

Having thus proved to their own satisfaction that a small chamber of 250 members was most suitable for the British Indian side of the Assembly, they argued that this precluded any attempt at direct election. This would give one member to every one million of inhabitants! More than even the number, a practical politician like Sir Samuel Hoare was daunted by the geographical size of the constituencies which a system of direct election would naturally involve. Each constituency on this basis would extend over 3,300 square miles! But Lord Peel would not agree that this computation was accurate; in dividing the whole area of British India by the number of its members in the Assembly, he would first of all exclude the town constituencies comprising 25 per cent of the people of India, and that would give 4,000 square miles as the average area of a rural constituency. This was all on the assumption that there would be single-member constituencies. But one had to take also into his consideration the complicating factor introduced by the system of communal representation in either of its two variants viz., (a) separate electorates involving over-

¹ Simon Commission Report: Vol. II, p. 119.

lapping areas, or (b) reservation of seats involving plural member constituencies. Thus there would have to be constituencies of varying sizes extending from 4,000 to more than 12,000 square miles and that too in a country where the communications were still undeveloped. To quote the Simon Commission, 'the would-be member might well have to carry on his electoral campaign over an area as large as Scotland and have to seek his constituents among a population equal to that of Wales.' This was really making a farce of the idea that the representation would be of the people.

The British Indian politicians were almost unanimous in opposing the system of indirect election to the Federal Assembly. They agreed that the Upper House, as the representative of the units, should be elected by the Provincial Legislatures and that the Lower House, representing the nation, should be directly elected by the people. This was indeed the case in every federation known so far to the world. As for the mammoth electorates and unwieldy constituencies, there was certainly no point in comparing them with those existing in a small country like Great Britain.¹ The system of direct election to the Legis-

¹ The comparison with the United States of America made by the Lothian Committee (p. 160) is much more apposite. 'The experience of the United States of America, which are to-day infinitely better equipped both in education and in radio and transport facilities than India, and where political parties are exceptionally highly organised, proves that there is nothing inherently impossible about the eventual election of the Federal Assembly by the whole adult population of British India. The area of the United States is 3,026,789 square miles of which one-third consists of thinly populated mountain territory. The population is 122,775,046. The number of members to the House of Representatives is 435 or one for every 6,958 square miles and 282,241 of the population.

lative Assembly did work well during the last ten years and if its membership was enlarged from its present number of one hundred elected members to three or four hundred, the constituencies would become much smaller and there would be greater scope for an intimate contact between the member and his constituency. Even the Government of India, who stated in their Despatch that *prima facie* they were rather attracted by the scheme of indirect election, had to confess after a close examination serious doubts as to its efficacy. The confusion of electoral issues between the centre and the provinces, the danger of excessive provincialism in the central legislature, the possibility that it would lend itself to the use of improper methods were all pointed out by them as the difficulties inherent in an indirect system of election. Under the Minto-Morley Reforms, the Indian politicians had experience of the different varieties of indirect election—by the district boards and municipalities in the case of the provincial councils and by the latter in the case of central legislature, and their experience did go to show that it could not be acceptable to the people of India. It might be that the British Conservatives were opposed to the direct system because they were afraid that it would get into the legislature radicals—men easily susceptible to outside influence and to popular excitement. They need entertain no fear on that score. With the coming in of the

The number of the Senate is 96. Two members are elected by each state, voting as a single constituency, of which the largest is New York, with an area of 49,204 square miles and a population of 12,588,066 and the smallest is Rhode Island, with an area of 1,248 square miles and a population of 687,497. (Nevada has an area of 109,821 square miles and a population of 91,058).'

representatives of the Indian States, there would be a lot of ballast in both the Houses which would keep the ship on an even keel. By adopting the system of indirect election to the Upper House and by laying down special qualifications for membership to it such as a higher property qualification and an older age limit, they could make the Upper House as conservative as the present Council of State and much more powerful. They were certainly mistaken if they were thinking that indirect election alone could make the Lower House conservative. That would certainly not be the case. Moreover, it was indeed impossible at that time of day to go back to the indirect system. That had once been tried and found wanting. 'You deliberately adopted the system of direct election in 1919' said Sir Tej Bahadur Sapru, 'and you cannot afford to go back on it.' Any such proposals coming from the British Government would be treated in the country as being of a highly retrogressive and reactionary character.¹ Sir C. P. Ramaswami Aiyar pointed out that the Legislative Assembly, by its work during the last ten years, secured the affections of the people and established for itself a distinct place in the national life of the country, and if they would substitute the indirect system for the direct one in electing that body, that would certainly rouse organised and widespread opposition in the country.² Dr. Ambedkar said that even though it might be argued that indirect election was only direct election one step removed, psychologically there was a great difference between the two.

¹ Federal Structure Committee (1st Session) p. 118.

² *Ibid*: p. 122.

He advocated direct election for its efficacy as an instrument of political education to the masses and as a sure foundation for real responsible government in India. 'In my opinion, what is of the utmost importance is that the people of India should be impregnated with the sense that, in the last resort, they are responsible for the good government of the country. And I venture to suggest that, unless the Indian citizen is made to feel that it is he who can make or unmake the government, we shall never be able to succeed in establishing the true foundations of a responsible government in India.'¹ Thus, the British Indian Delegates one and all declared, with a surprising degree of unanimity, that the lower chamber should have to be directly elected by the people and that no other method of election would be satisfactory to the people of India.

Sir Akbar Hydari, the Indian State Conservative, who was in principle against a second chamber agreed to it as a concession to British Indian sentiment, on condition that they should make no difference between the two chambers in composition and powers. According to him, the Lower House also should represent the federating units as units and that it should not be constructed as one directly representing democracy. If they wanted to attract the Indian States into the federation, they should see that they made it easy for them to come in. As direct representation of the people was not possible in the case of the Indian States, it was not good to have that system in the case of British India. To secure the same type of representatives

¹ Federal Structure Committee (2nd Session) p. 45.

from both the parts of India, it would be well at the outset to have representation of the provinces (that is, the provincial legislatures) in the Lower Chamber also, with the idea of changing it later to some other mode of indirect election. He made a strong appeal to his friends on the opposite side to consider 'whether it will not be in the interests of our country to have a mode of election to start with, which we are sure will give us a stable House, and will give us men of experience and judgment, at least for the present, and then, after the experience we may have of about two or three councils, to see whether we can enlarge the foundation.'¹ It might be that the British Indians might then listen to Mr. Gandhi and go in for some kind of indirect election by village panchayats, and a similar system might gradually be evolved for the representation of the Indian States as well. It was of paramount importance to secure at the outset the same category of representatives from both the parts of India.

Sir Samuel Hoare, against his better judgment, yielded to the wishes of the British Indian Delegates and proposed in the White Paper that the Council of State should be elected by the Provincial Legislatures and the Federal Assembly directly by the people. But the Joint Parliamentary Committee, consisting of a large majority of Conservatives took the view of Sir Akbar Hydari and recommended, subject to future review, that both the chambers should be indirectly elected by the Provincial Legislatures.

¹ Federal Structure Committee (1st Session) p. 131.

The Powers of the Two Chambers

There was a large measure of agreement in the Federal Structure Committee on his question. Sir Akbar Hydari expressed his strong view that in case there would be two chambers, they should be made co-equal in power, any deadlocks between the two being resolved by a Joint Session. He no doubt recognised the possibility that either chamber, owing to its greater intrinsic merit, might gain superiority over the other; 'but we must leave that to time and experience and the unwritten, though no less binding, law of custom and usage.' And even this could be avoided to some extent if the composition of the two chambers was so designed as to make them differ as little as possible in their complexion and character. From this point of view, he would deprecate one chamber coming to be considered as more the Indian States' Chamber than the other. That was why he demanded an equal amount of weightage for the Indian States in both the chambers. The Indian States' Delegation recognised the force in his argument and so they agreed to 40 per cent representation in the Upper Chamber in order to secure $33\frac{1}{3}$ per cent in the Lower House. As differences between the two chambers would be resolved by a joint session of the two chambers, the Indian States demanded that they should be secured at least 36 per cent representation in such a joint session.¹ This meant that the relative strength of the two chambers should be in the ratio of 2 : 3. Thus, 'so far as the letter of the constitution is concerned,' and so far as human ingenuity could go, the powers of the two

¹ Third Round Table Conference p. 12.

chambers have been made co-equal, so that they might really function as one chamber.

There was however one exception to this which was strongly insisted upon by the British Indian Delegates and which found acceptance in the White Paper Proposals. In line with the constitutional practice in other countries and the experience of the Indian Legislature under the Reforms of 1919, they wanted that money bills and demands for grants should originate only in the Federal Assembly; that while the Council of State might amend or reject a money bill, it should not have that power with regard to supply. In case of disagreement between the Cabinet and the Federal Assembly on a vote of supply and then only at the instance of the Government could the Upper Chamber demand a joint session for the consideration and final determination of any demand for grant which had been reduced or rejected by the Federal Assembly. Against this limitation on the power of the second chamber, Sir Akbar Hydari entered his strong protest. The Joint Committee here also agreed with Sir Akbar's view and recommended that both chambers should have equal powers in finance as in legislation.

The Composition and Character of the Federal Legislature

We have already seen that the Simon Commission recommended about 250 members as the most suitable number for the British Indian side of the Federal Assembly. This gives the Indian States 125 as their quota. If the Federal Assembly thus consists of 375 members, the Council of State should consist of 250 members, of which the Indian States should have 100

and British India 150. Its strength however has been increased to 260, the ten additional members being divided between the two in the same ratio. The six additional members thus allotted to British India are to be nominated by the Governor-General in his discretion.

The states' members in the Council of State are to be appointed by the Governments (i.e. the Rulers) of the Indian States or groups of states. These partake the character more of representatives than of delegates, in that they are not required by law to cast their votes or vacate their seats at the bidding of their Rulers. The British Indian members of the Council of State, as was recommended by the Joint Committee, were to be elected by the Upper Houses (or the Legislative Councils) in those Provinces where these would be constituted, and in others by electoral colleges set up for the purpose and in every way corresponding to them in composition and character. During the passage of the Government of India Bill through the House of Lords, this has been amended, and direct election through communal electorates is prescribed in the case of seats allotted to Hindus, Muhammadans and Sikhs, while indirect election (with some modifications) is retained for the others.¹ The states' members in the Federal Assembly will largely be the nominees of their Rulers, even though it is possible that in a certain number of cases, the Rulers may give 'a voice' in their selection to their legislatures which bear some resemblance to the Minto-Morley Councils. The British Indian quota of representatives to the

¹ The Government of India Act. First Schedule, Part I. paras, 5, 8, 9, 10.

Federal Assembly are to be elected by the Lower Houses (or Legislative Assemblies) in all provinces.

The Council of State has been made at once the most powerful and the most conservative of all the Second Chambers in the world. It is indeed an improved copy of the present Council of State! The same (or similar) qualifications now obtaining for membership of the Council of State will be prescribed also to its successor and namesake, e.g. an age limit of not less than 30 years *plus* a high property qualification, or former membership of the Indian Legislature or a Provincial Legislature, or any distinguished public service thus recognised by a state or province. These qualifications are intended to bring into the Council of State old and experienced men and people with a large stake in their country who might therefore be expected always to stand firm on the side of authority and order and to champion all sorts of unpopular causes. In order to enable the Council to perform more effectively these functions, it is made a permanent body, free from the vagaries of a dissolution. Its members are to be elected for a period of 9 years and a third of them are to retire once in three years. Under the White Paper Proposals, the Council of State was to continue for 7 years and the Federal Assembly for 5 years, unless sooner dissolved. But the Joint Committee, in their anxiety to make the Council of State the stronger and more powerful of the two, recommended the above change.

The apportionment of the quota of states' representation among the various states and of the British Indian representation among the provinces are set out in Appendix III. A few conclusions emerge from a

study of this allocation. Even though it is generally held that the representation to the Upper Chamber should be according to the status and political importance of the unit in the federation and that to the Lower mainly according to population, there is a great divergence from this principle in a number of cases. In the case of the states, the smaller are generally favoured at the expense of the bigger ones. For the success of the federation, this must have been necessary to some extent, though not to such a large extent. In the case of the Provinces, the anomalies that have found a place in this regard under the Montagu-Chelmsford Reforms are continued with a few modifications. Thus, Bombay with only two-fifths of the population and the Punjab with only one-half of the population of Madras have each four-fifths of the representation given to that province in both the chambers. There is however this consideration that with the exception of Bombay, in all the other cases, the weightage generally goes to the communal provinces, e.g. The Punjab, Sind, N. W. Frontier Province.

This leads us to a consideration of the communal aspect in the composition of the Federal Legislature. The British Indian side of the Federal Legislature is formed so as to represent communities, classes and interests by means of separate or 'special' electorates. It is composed in such a way that no community or class could be predominant. Every community and class have been able to secure some weightage for themselves at the expense of the majority community—the Hindus. Thus out of this part of the Federal Assembly of 250 members, Muslims are given 82 seats,

Sikhs 6, Indian Christians 8, Anglo-Indians 4, Europeans 8, and Hindus only 105, of which 19 are reserved for the Depressed classes. Special representation is also given to women (9 seats), commerce and industry (11), landholders (7) and labour (10). In the Council of State, only the last three classes are not given special representation. The British Indian quota of 150 seats in that House is distributed among the different communities, 49 being allotted to Muhammadans, 75 to Hindus, 6 to Depressed classes, 4 to Sikhs, 7 to Europeans, 1 to Anglo-Indians, 2 to Indian Christians, and 6 to women.

(ii) *The Executive*

The two special features connected with the Federal Executive are (1) its dyarchical character, and (2) its composite nature.

India for the last 15 years has had experience of the working of a dyarchical executive in the provincial sphere. This is now being transferred to the centre. Defence, external affairs and ecclesiastical affairs are reserved for administration by the Governor-General in his sole discretion, tempered only by his so-called responsibility to the British Parliament. In all other matters, the Governor-General is to be guided normally by the advice of his ministers who are to be responsible to the Federal Legislature. But even within this 'transferred' sphere, he may act in his own discretion, notwithstanding the advice of his ministers, if he thinks that it is necessary to do so for the discharge of his 'special responsibilities.' These special responsibilities are drawn in very wide terms. They are: (1) the prevention of any grave menace to the peace

or tranquillity of India or any part thereof; (2) the safeguarding of the financial stability and credit of the Federation; (3) the safeguarding of the legitimate interests of minorities; (4) the securing to members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (5) the prevention of commercial discrimination; (6) the protection of the rights of any Indian State; and (7) any matter which affects the administration of any department under the direction and control of the Governor-General. These have the effect of 'reserving' in part or whole many other subjects of very great importance, e.g. the tariff and the monetary policies, the borrowing policy of the Federation etc. Even though it is often said that these 'special responsibilities' will be exercised only on rare occasions, it is the unpredictability of their effect in actual working that makes them liable to grave suspicion. The cumulative effect of all the above arrangements seems to be that this 'responsibility at the Centre' is intended as an eye-wash to moderate opinion in India.

From a Federal point of view, the composite nature of the cabinet is of much greater interest for us. The Muslims and the Indian States have demanded that they should be given adequate representation in the cabinet also. This is sought to be secured by a direction to that effect to the Governor-General in his Instrument of Instructions. Thus the federal framework of our future government has exerted its influence not only on the composition of the federal legislature but on that of the federal executive also. The principle of territorial representation in the Federal

cabinet has been recognised by convention in almost all federations, to a greater or less extent according to the intensity of the centrifugal or the centripetal feeling in that federation. Before the formation of our Federation, Canada has offered the one 'pure' instance of this principle. It has been the unwritten law of her constitution, since its inception as a federation, that special representation should be given in the cabinet to (1) French Canada, and (2) the other eight provinces; as well as (3) the English-speaking population of Quebec and (4) the Roman Catholic population of the Dominion that is not French.¹ India then is not alone in her recognition of a principle which is thought inimical to efficiency as well as to the 'collective responsibility' of the cabinet. There is however this one important peculiarity in the case of the Indian cabinet which differentiates it from the Canadian type. The Indian Cabinet is to be 'responsible' to a legislature which, as we have already seen, differs widely in its complexion and character from the Canadian Legislature, and it is therefore impossible to predict what its responsibility will ultimately come to!

Another complicating factor in the relation of the Federal executive to the Federal Legislature is that a large number of subjects (see List III), some of them like social legislation of a highly controversial nature, are the concern of British India only and not the states; that while ordinarily the states' representatives may not take part in any such legislation, they will certainly participate in the discussion and voting on any of them if they think that it affects their inte-

¹ Porritt: *Evolution of the Dominion of Canada* pp. 357-8.

rests in any way or that it involves the life of the cabinet. It is highly probable therefore that the responsibility of the Executive to the Legislature may be largely obscured by the presence of this new 'official bloc' in the Federal Legislature.

(iii) *The Federal Court*

The Federal Court is an indispensable element of every Federation. It is set up as a part of the Federal Constitution, and is made independent of both the Federal and 'state' Governments. The Federal Constitution being in the nature of an agreement between various parties, it is necessary that there should be an independent authority to interpret the constitution in an impartial spirit in order to prevent any encroachment by one on the authority or rights of another. There is also the necessity for a final judicial authority in a Federal State to secure uniformity in the interpretation of Federal laws which are applicable to every one in the Federation irrespective of the unit to which he may belong and therefore which should not be allowed to get into confusion by a multiplicity of conflicting decisions that might otherwise be given on them by the courts of the different units of the Federation.

Hence it is of the highest importance that the Federal Court should be so constituted as to command the confidence and respect of all the parties to the Federation. This is steadily kept in view by the framers of the Indian constitution in their proposals for the constitution of the Indian Federal Court. It is to sit normally at Delhi, the capital of the Federal Government. It is to consist of a Chief Justice of

India and such number of other judges as His Majesty may deem necessary, but not exceeding six in the beginning. These are to be appointed by His Majesty and are to hold office until they attain the age of sixty-five years. No judge could be removed from office except for misbehaviour, or infirmity of mind or body, and only on a report by the Judicial Committee of the Privy Council to whom the matter has to be referred by His Majesty. Their salaries and other emoluments are to be fixed by Order in Council and are not to be varied to their disadvantage during their tenure of office. To be appointed a judge of the Federal Court, one must have been a judge of a High Court in British India or in a Federated State for not less than five years, or a barrister or a High Court Vakil of not less than ten years, standing. Only a barrister or a pleader of fifteen years, standing can be appointed as the Chief Justice of India. These provisions are intended to secure the independence and efficiency of the Federal Court as the highest judicial organ of the Federation.

There has long been a demand in British India for the establishment of a Supreme Court which should take the place of the Privy Council as the final court of appeal from the decisions of the High Courts and Chief Courts in British India. As a result of the discussions at the Round Table Conference, it was proposed in the White Paper that the Federal Legislature should be empowered to establish, if and when it wanted, a Supreme Court of Appeal for British India. During the Joint Committee stage, it was found that the constitution of two separate Courts of Appeal with overlapping jurisdictions might lead to undignified conflicts between them, and it was there-

fore proposed that the Supreme Court should be established as a branch or division of the Federal Court so that technically they would form only one court under a single Chief Justice, but organised in two chambers.¹ The Federal Court division would have the same *extent* of jurisdiction over both the British Indian Provinces and the Federated States and would decide disputes involving the interpretation of the constitution or a Federal Law on any of the subjects included in List I, while the Supreme Court division would deal with all civil cases arising under Lists II and III, brought on appeal from the High Courts in British India, without leave if the value of the subject matter in dispute exceeded a specified sum, but in any other case only with the special leave of the Federal (i.e., the Supreme) Court. These proposals are now incorporated in the Government of India Act.

The jurisdiction of the Federal Court is both appellate and original and in both the cases, it is exclusive. Its original jurisdiction is wide and undefined, subject only to two conditions: (a) That the parties to the dispute, the plaintiff as well as the defendant, must be two or more *Governments* (Federal, Provincial or State), and (b) that the dispute must involve 'a question (whether of law or fact) on which the existence or extent of a legal right depends.' But this jurisdiction has been made definite and clear, so far as the states are concerned. Where a state is

¹ It is proposed that judges of the Federal Chamber may sit in the Supreme Court division, but not *vice versa*—this because of the fear of Sir Akbar Hydari that the Supreme Court Judges may bring with them into the Federal Chamber some of their British India bias! See Joint Committee Minutes of Evidence: Vol. II-B, Q. 14355.

a party, the original jurisdiction of the Federal Court does not extend to it, unless the dispute—

- (i) concerns the interpretation of the Act or an Order in Council made under it, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that state; or
- (ii) arises under an agreement made between the Governor-General and the Ruler of the state for the purpose of carrying into execution any Federal law in that state, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that state; or
- (iii) arises under an agreement made after the establishment of the Federation, with the approval of the Paramount Power, between that State and the Federation or a Province, if and in so far as it is specifically laid down in the agreement that the jurisdiction of the Federal Court should extend to it.¹

If the dispute is between private persons only or between a private person and the Federation or a unit, it comes before the Federal Court only on appeal.² The appellate jurisdiction of the Federal Court extends, in the case of the states to all such cases (with

¹ The Government of India Act, Sec. 204.

² It may be noted that, as in all these cases where a private person is a party, the court of first instance is a state or provincial court, no suit can be brought against the Government (i.e., the ruler) of an Indian State without its own consent. It is possible that this may work as a virtual denial of justice in a number of cases.

the exception of item iii above) over which the court has original jurisdiction. In the case of British India, the jurisdiction is limited in the beginning to cases involving the interpretation of the Constitution Act or an Order in Council made under it, but the Federal Legislature, as we have already seen, is empowered to enlarge the appellate jurisdiction of the Federal Court and to present an address to His Majesty for an increase in the number of its judges, so that it may be organised in two Divisions, the one dealing with federal cases and the other with British India appeals. It may be noted that in all the above cases, the appeal is not allowed as of right to the Federal section of the court. It can only be with the leave of the Federal Court or of the High Court against whose decision it is sought. The idea behind this provision is that it is advisable to curtail the number of unnecessary appeals 'based upon the mere suggestion that a constitutional issue is involved.' To secure this object much more effectively, the Federal Court is empowered to make rules providing 'for the summary determination of an appeal which appears to the Court to be frivolous or vexatious, or brought only for the purpose of delay.'¹

It is provided that an appeal to the Federal Court will be by way of special case on facts stated by the court from which the appeal is brought. This means that the appeal can only be on a point of law and not on fact. Except in the exercise of its original jurisdiction, the Federal Court will not be called upon to

¹ Note by the Secretary of State for India on the Federal and Supreme Courts. Printed in the Minutes of Evidence: Vol. II-B, p. 1239; The Government of India Act. Sec. 214 (1). -

determine any question of fact.¹ If it wants any further information on the facts of the case in any appeal, it will have to return that case to the court below for a further elucidation or for a further statement of facts. This particular procedure has been adopted, since it has been found most acceptable to the Indian States.

The Federal Court will not have any power similar to that possessed by the federal courts in the United States of enforcing its decisions through its own officers, since the Indian Princes have refused to agree to it on the plea that it is derogatory to their own sovereignty. The decisions of the Federal Court are binding in law on every court in the Federation, but these have to be enforced through their own executive machinery by the High Courts of the provinces and the states from which the appeals are brought. This has been sought to be defended on the analogy of the procedure obtaining in this regard in the case of the Privy Council and the House of Lords in England. But what makes the whole analogy false and useless for our purpose is that England is not a federation whereas India is going to be one, and indeed one composed of such disparate elements! No difficulty whatsoever may be expected in this regard so far as British India is concerned, since the provincial courts are made completely independent of the provincial executive in the discharge of their judicial duties and as the Federal Legislature will have the power to regulate the jurisdiction and powers of all courts, except the Federal Court, with respect to the subjects on which

¹ Minutes of Evidence: Vol. II-B. Qs. 14038-14041.

it can legislate (see item 53 in List I and item 15 in List III). If the state courts are made as independent of the state executive as the British Indian courts, and if the Rulers of the Indian States agree to give the Federal Legislature the power specified above (under item 53 in List I), no one need entertain any fear at all on the possibility of non-enforcement of the Federal Court's decisions in the Indian States. But these things are not to be expected, at least for a long time to come.

There may be an appeal to the Privy Council (*a*) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any case involving the interpretation of the Constitution Act or an Order in Council made under it, or in any dispute to which a state is a party, without leave, and (*b*) in any other case, only by leave of the Federal Court or the Privy Council. The jurisdiction of the Privy Council will of course be recognised by the Rulers of the Indian States in their Instruments of Accession.

One of the inherent defects of a Federal form of Government is the uncertainty of law. One does not know whether a law passed by a legislature is valid or invalid until it is tested in the highest court of the Federation. But from the point of view of a Government, this defect is slightly of a different kind. When a Government wants to promote an expensive and difficult piece of legislation, the first thing that it desires to know is whether what it wants to do is within its constitutional powers or not. We know that there is great scope for this sort of uncertainty under our constitution where two lists of mutually 'exclusive' sub-

jects are enumerated.¹ This is sought to be mitigated by empowering the Governor-General in his discretion to refer any matter of public importance, being of a legal nature,² to the Federal Court and obtain its opinion. There will however be no limitation thereafter on the discretion of the Governor-General as to the particular course he may like to follow in the matter, eventhough there is no doubt that he would attach the greatest value to such advice. On the other hand, we may note that the Federal Court will not be bound to follow its own opinion in a subsequent case brought before it in the regular course of litigation. But as the advisory judicial opinion will be given, as in ordinary judicial proceedings, after hearing counsel and in certain cases after hearing the objections of the parties affected thereby, it really amounts to a judicial decision and therefore may prove of great value in a large number of cases.³

¹ There is also the question of the residual powers, in allocating which, the Governor-General must first of all have to satisfy himself that the particular subject is really 'residual' i.e., does not come under any of the three lists of subjects enumerated. This question also will be referred to the Federal Court for its opinion.

² The language used is very general, not restricting the matters that could be thus referred to the federal sphere only. A Provincial Government, for instance, can request the Governor-General to refer any important matter of a legal nature in which it is interested for the advisory opinion of the Federal Court. The Secretary of State even seems to think that questions of a justiciable nature, arising in the sphere of paramountcy, might also thus be referred.

³ Minutes of Evidence: Qs. 14142-14151; 14244-14252., The Government of India Act. Sec. 213.

CHAPTER VII

THE PRESENT AND THE FUTURE

‘Indeed, the whole idea of federation is to my mind, from a political and patriotic point of view, a far nobler and a far loftier idea, reaching into the very distant future and full of possibilities which it is impossible for us to imagine in their entirety at the present moment.’

—*Sir Tej Bahadur Sapru at the Federal Structure Committee (1st Session p. 64)*

SIR Samuel Hoare, Sir Akbar Hydari, Sir Muhammad Shafi and Sir Tej Bahadur Sapru were the four redoubtable Knights of the Round Table. They were the representatives of the four guiding principles in the new Indian Constitution—British Imperialism, Indian State Autocracy, Muslim Sectionalism and Democratic Nationalism. The first three were in an implicit alliance as against the fourth. The triumph of the last signified to each of them the end of its own existence—it meant Dominion Status, Democratic Self-government and Hindu Raj, and therefore each was determined to put off that evil day. The formation of an Indian Federation appeared as the way-out.

The Metternich and the Talleyrand of the Conference were Sir Samuel and Sir Tej. The Round Table Conference was a game of diplomacy. Sir Samuel’s admiration for the soundness of the arguments of Sir Akbar, and Sir Tej Bahadur’s solicitude for the opinions of his friend Sir Muhammad were the necessary events in this game. The verdict of the Conference was—the present for Sir Samuel and the future for Sir Tej. The verdict must have been

known to them even before the Conference assembled! Sir Tej noticed that Sir Samuel had the trump card of the whole situation in his hands and so he wisely decided to play for the future. It is his misfortune that while his colleagues saw in him the very incarnation of 'sweet reasonableness,' his unthinking countrymen should have denounced him as a traitor.¹ But no one knew better than himself that he was bringing India forward by another step towards that enchanting goal—Swaraj. He saw that federation was a *necessary stage* through which India should have to pass before she could attain that goal, and therefore conceded anything and everything to others in order to bring about that happy consummation. His vision extended to the distant future and noticed the present only in its relation to that future—'full of possibilities which it is impossible for us to imagine in their entirety at the present moment.' We hope that posterity will do justice to this measure of his patriotism.

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The working of Dyarchy since 1919 has familiarized the people of India with the basic principle of that complicated system of government known as federalism. The essence of federalism as well as dyarchy is the division of powers between bodies which are each independent of the other in the exercise of authority within the sphere allotted to it. There are of course other forms of this division of powers, as between the legislature and the executive and as between two chambers of the legislature. Whatever may be

¹ First R. T. C. Proceedings. p. 26.

the form of division, experience goes to show that the principle has been fruitful of much friction, that it has succeeded only where it has been ignored or circumvented in practice. We must never forget that government is an organism, an indivisible whole. The division of powers, as distinguished from a specialization of functions which may however be necessary for efficiency, is quite unnatural. There is an element of arbitrariness or artificiality in it. Many of the functions of government are interdependent, they dovetail into one another, and co-operation between the different parts of the organism is necessary for its successful working. How far, then, have the Fathers of the Indian Federation made provision for the growth of such a spirit of co-operation between the different organs of government in their federal system?

If we compare the Indian Federation with any other federation of our time, we meet with one peculiar but fundamental difference. The Indian Federation is an ill-assorted group of states and provinces, differing widely in their status and forms of government, and in the general complexion of the population inhabiting them. In all other federations, the unifying and co-ordinating element necessary for their successful working comes from the electorate and the party system, whereas in India, in the absence of these, it is the agent of the British Government that acts as the co-ordinating authority in virtue of his overriding powers and special responsibilities. 'We record our conviction,' declare the Joint Parliamentary Committee, 'that the existence of an authority in India armed with adequate powers, able to hold the scales evenly

between conflicting interests . . . will be as necessary in the future as experience has proved it to be in the past.'

The cardinal defect of the Indian Federation therefore is its failure to provide for a healthy development of the party system. In all other federations, the development of parties on national lines has been responsible, more than any other single factor, for minimising the importance of sectional or local interests and thereby the opportunities for friction between the federal and local governments, and further for bringing about co-operation and co-ordination in their work and activities to the end that each has a just appreciation of its own place in the national life of the country. This co-operation, and the growth of that party system which is the basis of this co-operation is impossible to expect between two irreconcilable principles of government—autocracy and democracy. Hence it is a fundamental tenet of every federal constitution that the same form or principle of government should prevail in all the component parts of the federation. The *Federalist* pointed out long ago that 'Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort than those of a kindred nature.'¹ This is a principle of universal validity the importance of which does not seem to have been fully appreciated by the framers of the Indian Federation. There may be fluctuating groups, but never stable parties based on high policies, among the nominees of the autocrats in the Indian Legislature. The weightage accorded to

¹ The *Federalist* No. XLIII.

them makes the matter worse, since in their dread of democracy they may coalesce to form 'the balancing factor' in a legislature divided into innumerable groups. There is a widespread suspicion among the people of India that the Indian Princes, being under the control of the British Resident in their domestic affairs, may be forced to send as their representatives to the Federal Legislature the nominees of the British Government. Thus may come into existence a nominated official bloc in a new guise, free from the trammels of the party system and fear of any dissolution.

From the same point of view, the recognition of the principle of communal representation by means of separate electorates or even reservation of seats is equally vicious, since it divides the electorate into a number of watertight compartments, keeps awake communal jealousies as between provinces, and makes difficult the growth of informal co-operation among them in the wider interests of the whole nation. Ever since 1906, this has formed an important plank in every instalment of Indian Reforms to the end that religious animosities have been exacerbated and the development of national parties has been made impossible. While thus making the growth of political parties impossible by giving representation to 'classes, communities and interests,' the British taunt us for our inability and lack of political sense to build up organized parties on a national basis—an indispensable preliminary to the grant of responsible government to India! There cannot be in the nature of things a strong and stable executive which has to be dependent for its tenure upon the favour of a number of groups who have nothing in common between them

but the hobby of making and unmaking cabinets. The weapon of dissolution is ineffective against them, since no change can be expected in their composition and complexion by an appeal to the country. 'The appeal to the country' indeed is a misnomer, for there is no one electorate to which an appeal can be made, but a congeries of electorates—Hindu, Muslim and Sikh, commerce and labour—each with a distinct interest of its own separate from all others. 'Parties depend upon a large undifferentiated electorate, among whom opinion fluctuates sufficiently to permit the securing of a majority by now one, now another of two or more political groups.'¹ There could be no such shifts in public opinion, no such ebb and flow in the strength of the various groups under a system of communal electorates.

The presence of the British as rulers in India has been yet another cause which has retarded the growth of responsible parties divided on national issues. 'British imperialism *versus* Swaraj' is the all-absorbing question to which all others have hitherto been of secondary importance. 'Under your present system' said Mr. Jayakar, 'you do not give my country any opportunity for the aggregation of parties on rational principles. Your present system drives all of us into a herd, the only nexus amongst us being opposition to government.....Whether we are social reformers, or labour men, or communists, or Bolsheviks or landlords, we are all driven into the same political party, who, if there was responsible government in India, would immediately disintegrate and form into diffe-

¹ Carpenter: *Guild Socialism*, p. 274.

rent parties on rational political principles. Your present system makes this impossible.”¹ Whether similar criticism cannot be applied to the new constitution with its ‘reserved departments’ and ‘special responsibilities’ and a nominated Indian States’ bloc to cap the whole, may be left to the imagination and judgment of the reader.

With our experience of the Minto-Morley and Montagu-Chelmsford Reforms, we may forecast with tolerable certainty the working of the Simon-Hoare Reforms, which repeat many of the features of their predecessors. Official bloc, indirect election, dyarchy, responsibility of the ministry to both the chambers of the Legislature will in effect mean the failure of dyarchy and the setting up of a stable but irresponsible executive at the Centre and—a repetition of the story of the last decade of Indian politics.

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The general tendency in all federations has been towards an enlargement of the sphere of authority of the central government. The economic and political forces which have worked to bring about the federal union, work within the federation towards a closer union and greater co-operation between the parts. The development of communications by rail, road and telegraph, the easy transmission of goods and ideas from one part of the country to another, the growing complexity of industrial and commercial organization and the need for a more careful regulation of them have been potent causes in bringing about this shift of

¹ Federal Structure Committee (1st Session) p. 180.

authority from the units to the centre. The establishment of closer and more intimate contacts between people of different parts through their common interests in business and government and the development of the idea of nationhood have made the old ideas of sectionalism antiquated in the new atmosphere. This healthy development is not easy to forecast in the case of our country. The Indian States have agreed to Federal regulation only within a very restricted sphere, and all those matters of social and economic legislation which are gradually being taken over by the Federal Governments in all parts of the world are here placed in the Concurrent List. Even the British Parliament cannot amend the constitution where the interests of the states are concerned. When any change has to be brought about in the distribution of powers between the Federal Government and the Indian States, *each* state has to agree to every such change by means of a new treaty, agreement or instrument.¹ Even in the United States whose constitution is said to be the most rigid of all Federal Constitutions, each individual state is not allowed the same discretion to say that an amendment is not applicable to its area on the ground that it is not included among those three-fourths of the states who have given their approval to it. Since the Indian States are autocratic, we have every reason to suppose that their Rulers will not agree to any diminution in their power, even if it be in the interests of their own people.

It has hitherto been a tradition with the people of British India that they should not interfere in the

¹ The Government of India Act. Sec. 6 (5).

internal affairs of the Indian States. Even the Indian National Congress, the premier political organisation of British India, has done nothing so far to ameliorate the condition of the people of the states beyond addressing occasional requests and appeals to their Highnesses to rule their states more in conformity with the ideas of the twentieth century. There has hitherto been an intense feeling of love and affection among the people of India for these survivals of their ancient ruling dynasties. They have resented the arbitrary power exercised over these Rulers by the Political Department and regarded the least slight upon an Indian Prince as a big insult to the honour and self-respect of the people of India and their nationhood. The movement against the Indian States is but of recent origin. It is caused by stories of aimless oppression of the people in some states and generally by the immoral and extravagant life led by many of the Princes. It is intensified by the widespread suspicion and fear among the people that the Princes are in an unholy alliance with the British to withhold from them their long-cherished right to self-determination and Swaraj, in return for British support of their autocratic rule or misrule within their states. The legal acumen expended in their service to prove that their relations are with the British Crown and could never be with a future Dominion Government in India and the acceptance of this contention by the Butler Committee have made matters worse. The privileged position secured by the Indian States as a price of their entry into the federation—the transfer only of a minimum number of subjects for federal legislation, the freedom from federal control in exe-

cutive and judicial matters, the weightage in the legislature and the right to nominate their representatives—is not calculated to improve matters. There are other grounds for their suspicion and fear of the Indian Princes. While the representatives of British India have no right to discuss any matters pertaining to the Indian States not transferred by them to the Federation, the nominees of these autocrats have the right to determine such British India questions as the increase in the rate of the income tax (which would incidentally relieve them of additional financial burdens in other directions), the tenure of the cabinet even in connection with matters coming under the Concurrent List etc. These incidents will intensify the revulsion of feeling against the Princes and set the people seriously thinking on the ways and means of democratizing the governments of the states.

The Indian Princes and British India are anyhow bound to come into conflict on the question of the final transfer of power from Britain to the National Government in India. The Governor-General and Viceroy is ultimately responsible for law and order throughout the whole of India. As Governor-General, he has a special responsibility for the preservation of peace and tranquillity in British India and for that purpose to interfere in the sphere of provincial autonomy in an emergency through the medium of the Governor's 'special responsibilities.' As Viceroy, he is under the obligation to interfere in the internal affairs of the states in case of misrule in order to establish peace, order and good government and to preserve the dynasty of the Ruler from extinction. The Butler Committee have also given it as their opinion that in

case of popular agitation for a change in the form of government in the states, 'the Paramount Power would be bound to maintain the rights, privileges and dignity of the Prince; but it would also be bound to suggest such measures as would satisfy this demand without eliminating the Prince.' It has been strenuously maintained therefore by the Indian Princes that this paramountcy should remain *in perpetuity* with the British Crown and its agent the Viceroy and should never be transferred to the Federal Government in India. Sir Akbar Hydari, speaking in the Federal Structure Committee of the First R. T. C. declared that he *could not conceive any period of transition* after which paramountcy should come within the scope of the Federal Government. 'I look forward to the day when all reserved subjects will be transferred,' he said 'though I believe we all agree that that time has not yet come. The only exception to eventual transfer that I envisage is paramountcy in the sense in which I have defined it elsewhere and *that* I consider should always remain the prerogative of the Crown—to be exercised, it is true, on lines more consistent than has always been the case in the past—if possible, in accordance with some regular form of procedure to be evolved hereafter, but still irrevocably and in perpetuity the prerogative of the Crown through his representative the Viceroy.' Sir Akbar Hydari was not correct in saying 'that it was the only exception to the eventful transfer of the reserved subjects' because of its intimate connection with another reserved subject of great importance viz., the

defence of India. This has been made clear by Mr. Panikkar while giving evidence on behalf of the Chamber of Princes before the Joint Committee. He said that before the reserved subjects could be transferred finally to the control of the Federal Legislature, the Princes would desire that their consent should be taken, and 'no transfer which would involve any change in their relations with the Crown should be permitted *without the full consent of each individual federating state.*' He had of course particularly in mind the transfer of the army to responsible Indian Ministers. 'The control of the army' he proceeded, 'since it involves the defence of India, and since the defence of India includes the protection of the states from internal commotion and external aggression, we consider to a large extent mixed up with the question of paramountcy.'¹ So then, 'the consent of each individual federating state' is necessary before India can attain Dominion Status!

All-India Federation therefore has not brought the British Indians and the Indian Princes a whit nearer than where they were before. The old controversy between the two has not come to an end. The vicious circle persists. The British do not agree to relinquish their rights of paramountcy over the states until and unless self-government develops as an antidote to irresponsible government in the states. The Indian Princes do not agree to the transfer of Paramountcy and Defence to a responsible government until they are fully satisfied (will they ever be?) that it will neither remain neutral nor interfere against their

¹ Joint Committee Minutes of Evidence: Vol. II-A, Qs. 2961-64.

personal interests in case of popular agitation or insurrection against their rule. The people of India have however no wish to be led into a blind alley by agreeing to these contentions. It is inconceivable to them that to satisfy the whims and fancies of a certain number of irresponsible potentates in India or the interests of certain commercial magnates in Britain, they should for ever remain under their joint tutelage. Since Federation is no answer to the demand of the people of India for Swaraj, Non-co-operation and Civil Disobedience Movements have not been exorcized as yet from the political life of the country. The next stage of the Indian Nationalist Movement would be nation-wide, embracing within its fold the people of the states and the people of British India. Unless patriotic Indian Princes voluntarily relinquish their personal rule and unless the British by their persistent pressure on the Rulers bring about a change in the form of government in the states more in conformity with popular wishes, the struggle will leave behind it memories of hatred and animosity against the British and the Indian Princes. Even though we now and then come across talk of complete independence for India and complete extinction of the Indian States, that is confined as yet only to a small minority of the people. The vast majority of Indians have still faith in British connection and the inherent goodness of the British character; they have still love and loyalty for the Indian Princes and their ancient dynasties. Unless both these take a statesmanlike view of their responsibilities and promote and not obstruct the political progress of the people of India towards

Democracy and Dominion Status, the future will have nothing to say about either of them.

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The Hindu-Muslim problem is the question of the hour. The future of India is intimately connected with its solution. It is the clearness of British policy in regard to this and the failure of the Indian leaders to perceive its importance that has been the cause of all our woes. There need be no doubt that the voice of a united British India would have exercised a more potent influence both on the British and the Indian Princes. The Muslims have been encouraged in their sectionalism by the attitude of the British towards their demands—demands inconsistent with Nationalism and Democracy. The Hindu leaders are equally to blame for their lack of constructive statesmanship and imagination which should have taught them the imperative necessity of meeting their Muslim brethren half-way in their demands in a generous and friendly spirit instead of sullenly acquiescing in the end in a Communal Award by which the British have posed themselves as the friends and protectors of the Muslim minority. If the Hindus and Muslims fail to come to an amicable settlement on their future relations, the Indian Nationalist Movement has to be postponed indefinitely and the British and the Indian States, by holding the balance between the communities, will be the effective rulers of the country.

The Indian Federation as a solution of the Hindu-Muslim problem is an idea of permanent worth and importance to India for which we have to be grateful to the British. Muslim majorities in some provinces

and Hindu majorities in others are an automatic guarantee of good treatment of each in the other throughout the whole of India. As we have seen earlier, 'communal provinces' are only a development of the idea of 'separate electorates' and it was once declared by no less a Muslim leader than Sir Muhammad Iqbal that when the former were conceded, the latter might safely be given up. We hope and trust that with the growth of greater mutual confidence between the communities and the realisation of the importance of common citizenship and the idea of Indian Nationhood, this result may be expected to ensue in no very distant future.

It is absolutely necessary that if India wants to secure and enjoy Swaraj peacefully, she has to evolve a system of government which is more in consonance with her past traditions and which at the same time gives confidence to the British and the Minorities. It is a stock argument with the British that Parliamentary government of the British type cannot be made to work in Indian conditions. Sir Samuel Hoare argued before he became Secretary of State, that 'as long as there are these unfortunate divisions and suspicions in India, so long will it be necessary for the Viceroy, in the interest of the Minorities to retain overriding powers.'¹ But as he himself pointed out, these overriding powers or safeguards are inconsistent with any system of responsible government. There is also the legitimate fear among the British that on account of communal representation (for which we have to thank them), there will only be a number of unrelated groups

¹ Federal Structure Committee (1st R. T. C.) p. 177.

in the legislatures like those in the French Legislature, and there will not be two or three strong national parties divided on questions of policy as in the British House of Commons. Hence instability will be a feature of the Indian cabinets as it has been of the French cabinets, and instability of the executive in such a large country as India with its deep communal divisions and grave economic issues and without any long traditions of national unity to set against these disruptive elements would cause inefficiency in administration and spell certain disaster to the country.

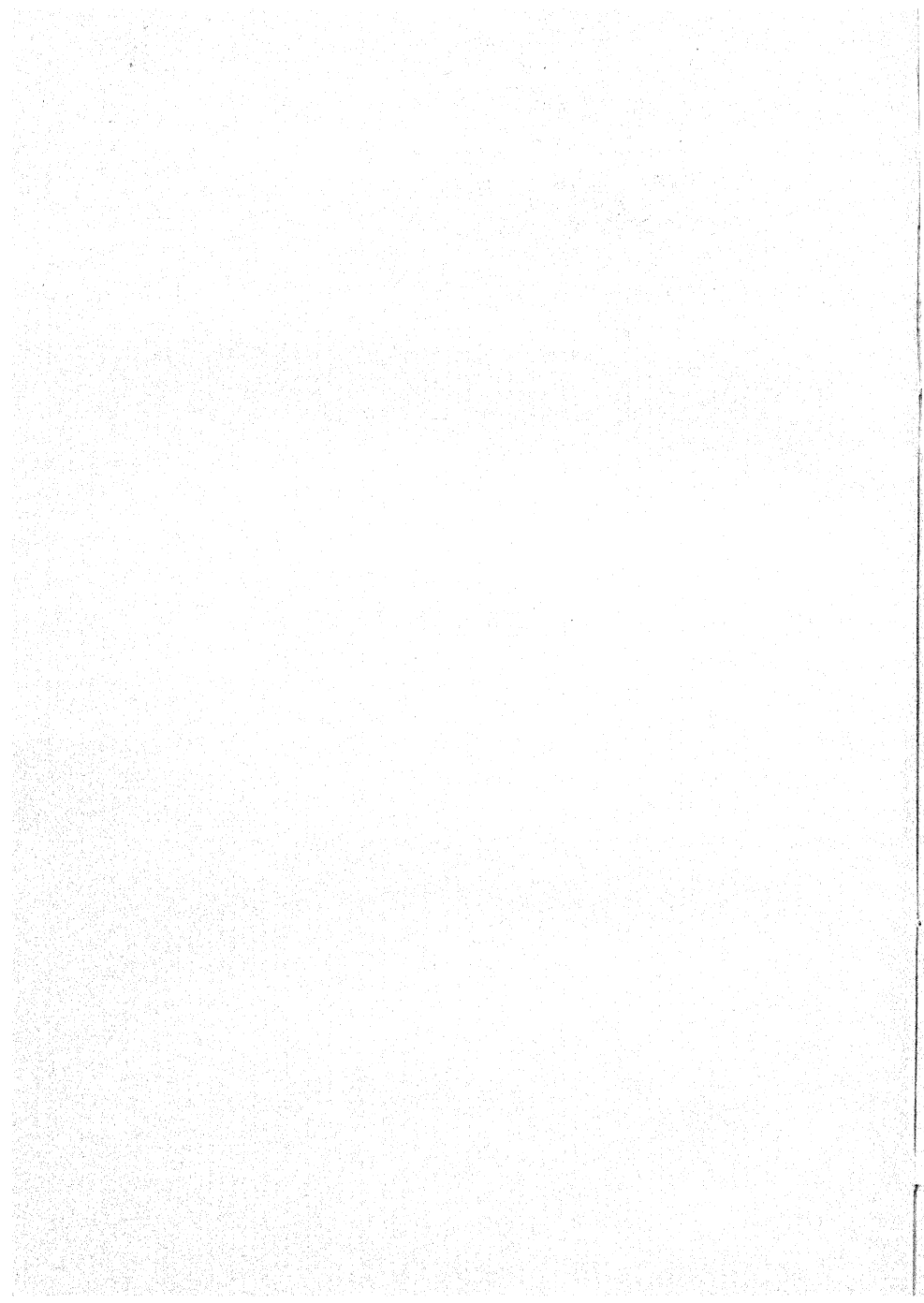
The ideas of great Indian leaders like the late Mr. Gokhale and His Highness the Aga Khan, and those who were responsible for the Congress-League Scheme in 1917, were all in favour of an irremovable executive of the Swiss type as being most suitable to Indian conditions. This has been advocated of late by Sir Tej Bahadur Sapru during the Round Table Conference, and again by the Labour section of the Joint Parliamentary Committee in Mr. Attlee's Draft Report. If the late Mr. Montagu and Lord Chelmsford had not rejected the Congress-League Scheme as unworkable, our ideas of responsible self-government would have been different. But having been accustomed during the last 15 years to responsible government, albeit in the dyarchical form, in the provinces, it is not surprising that our leaders could not bring themselves to accept this new type of executive. But we must set against this the permanent advantages of a system of 'committee government' both in the Centre and the Provinces. This is in line with our historical traditions of the Panchayat Government in the villages. Stability of the executive and collective res-

possibility are impossible to have together in practice under present conditions, as every cabinet will have to include the representatives of the minorities and as the legislature to which they are to be responsible will also be divided into a number of groups on account of special representation and reservation of seats. We must moreover not overlook the experience of other countries in the world at the present time which have been compelled to choose a strong executive to tackle the highly complicated problems of modern economic and political life. According to our scheme, Ministers will be elected by the Legislature so as to reflect its own composition, and they will remain in office for the whole duration of the legislature unaffected by an adverse vote against any of their legislative measures. They will carry on government by compromise and this will satisfy all classes and communities. In that case, there will also be no need for Governor's or Governor-General's 'special responsibilities,' which are a negation of responsible government. As nationalism is developed and as stable national parties are evolved, this may give place in the fulness of time (if necessary) to the British type of Parliamentary Government.

Whatever changes in the forms of government we may expect in future, we may note that the work of the Round Table Conference will not have been in vain. The Federal idea is one that is likely to endure as a permanent feature of the Indian Constitution. The delimitation of the spheres of authority between the Federal Government (including for this purpose that of the Governor-General and Viceroy) and the Provincial Governments will also remain as an inte-

gral part of that system. In calming down the mutual suspicions and fears of the two great communities in India, in bringing the two political divisions of India together into one national union, and in preparing the final stage for the attainment of 'Swaraj' (Democracy and Dominion Status), the All-India Federation shall have the good wishes of every patriotic son of India.

APPENDICES



APPENDIX I

LEGISLATIVE LISTS

LIST I.—FEDERAL LEGISLATIVE LIST

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held in virtue of any lease or agreement with that state, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations.

15. Ancient and historical monuments ; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.

18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including light ships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation, and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that state or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oil fields.

36. Regulation of mines and oil fields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that state.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;
non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list ; but not including fees taken in any court.

LIST II.—PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power) ; the administration of justice ; constitution and organisation of all courts, except

the Federal Court, and fees taken therein ; preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention.

2. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof ; the salaries, allowances and privileges of the members of the Provincial Legislature ; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation ; hospitals and dispensaries ; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I ; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards ; encumbered and attached estates ; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province ; markets and fairs ; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods ; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor ; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.

34. Charities and charitable institutions ; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.
45. Capitation taxes.
46. Taxes on professions, trades, callings and employments.
47. Taxes on animals and boats.
48. Taxes on the sale of goods and on advertisements.
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and goods carried on inland waterways.
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees in any Court.

LIST III.—CONCURRENT LEGISLATIVE LIST.

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.
3. Removal of prisoners and accused persons from one unit to another unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce ; infants and minors ; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land ; registration of deeds and documents.
9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency ; administrators-general and official trustees.
13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.
15. Jurisdiction and Powers of all courts, except the Federal Court, with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy ; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this part of this list.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II

26. Factories.
27. Welfare of labour ; conditions of labour ; provident funds ;

employers' liability and workmen's compensation ; health insurance, including invalidity pensions ; old age pensions.

28. Unemployment insurance.

29. Trade Unions ; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this part of this list.

36. Fees in respect of any of the matters in this part of this list, but not including fees taken in any Court.

APPENDIX II

Classification of the Indian States according to (1) salute, (2) area, (3) population, and (4) Revenue.

1. *Salute* (permanent) :

| | | |
|----------|-----|-----------------|
| 21 guns. | ... | 5 |
| 19 " | ... | 5 |
| 17 " | ... | 13 |
| 15 " | ... | 17 |
| 13 " | ... | 16 |
| 11 " | ... | 29 |
| 9 " | ... | 23 |
| Total .. | | <hr/> 108 <hr/> |

2. *Area* :

| Square miles. | Class A | Class B | Total |
|------------------|---------|-----------------|-----------------|
| 0—10 | ... | 167 | 167 |
| 10—100 | ... | 159 | 161 |
| 100—1,000 | ... | 70 | 126 |
| 1,000—10,000 | ... | 13 | 63 |
| 10,000 and above | ... | 1 | 13 |
| Not given | ... | 32 | 32 |
| Total ... | | <hr/> 442 <hr/> | <hr/> 562 <hr/> |

3. *Population* :

| Number | Class A | Class B | Total |
|--------------------|---------|-----------------|-----------------|
| Under 1,000 | ... | 154 | 154 |
| 1,000—10,000 | ... | 174 | 174 |
| 10,000—1,00,000 | ... | 77 | 124 |
| 1,00,000—10,00,000 | ... | 15 | 76 |
| Over 10,00,000 | ... | — | 12 |
| Not given | ... | 22 | 22 |
| Total ... | | <hr/> 442 <hr/> | <hr/> 562 <hr/> |

4. *Revenue :*

| Rs. | | Class A | Class B | Total |
|-----------------------|-----|---------|---------|-------|
| Under 1,000 | ... | — | 28 | 28 |
| 1,000—10,000 | ... | — | 149 | 149 |
| 10,000—1,00,000 | ... | 2 | 195 | 197 |
| 1,00,000—10,00,000 | ... | 58 | 69 | 127 |
| 10,00,000—1,00,00,000 | ... | 52 | — | 52 |
| Over 1,00,00,000 | ... | 8 | — | 8 |
| Not given | ... | — | 1 | 1 |
| Total ... | | 120 | 442 | 562 |

N. B.—Class A consists of states which have salutes, including 8 of which the salutes are not permanent. Class B consists largely of estates. (See Federal Structure Committee (1st Session, p. 105.) It may be noted from the above classification that 454 states are each less than 1000 sq. miles in area, 452 states have less than 1,00,000 of population and 374 states have less than Rs. 1,00,000 in revenue.

APPENDIX III

(1) The representation of the provinces and territories in the Federal Legislature.

| Name of the Province | Population in millions | No. of seats in the Coun- cil of State | No. of seats in the Federal Assembly |
|---|---------------------------|--|---|
| Madras ... | 45.6 | 20 | 37 |
| Bombay ... | 18 | 16 | 30 |
| Bengal ... | 50.1 | 20 | 37 |
| United Provinces ... | 48.4 | 20 | 37 |
| Punjab ... | 23.6 | 16 | 30 |
| Bihar ... | 32.4 | 16 | 30 |
| Central Provinces (with Berar) ... | 15.5 | 8 | 15 |
| Assam ... | 8.6 | 5 | 10 |
| N. W. Frontier Province ... | 2.4 | 5 | 5 |
| Sind ... | 3.9 | 5 | 5 |
| Orissa ... | 6.7 | 5 | 5 |
| Delhi ... | 0.6 | 1 | 2 |
| Ajmer-Merwara ... | 0.6 | 1 | 1 |
| Coorg ... | 0.2 | 1 | 1 |
| Baluchistan ... | 0.5 | 1 | 1 |
| Non-Provincial ... | — | 10 | 4 |
| Persons nominated by the Governor-General in his discretion ... | — | 6 | — |
| Total ... | 257.1 | 156 | 250 |

(2) The representation of the Indian States in the Federal Legislature.

| Name of the State | Population in millions | No. of seats in the Council of State | No. of seats in the Federal Assembly |
|--|---------------------------|---|---|
| (A) Hyderabad ... | 14.4 | 5 | 16 |
| Mysore ... | 6.6 | 3 | 7 |
| Kashmir ... | 3.6 | 3 | 4 |
| Gwalior ... | 3.5 | 3 | 4 |
| Baroda ... | 2.4 | 3 | 3 |
| Kalat ... | 0.3 | 2 | 1 |
| Travancore ... | 5.1 | 2 | 5 |
| Cochin ... | 1.2 | 2 | 1 |
| Rampur ... | 0.5 | 1 | 1 |
| Benares ... | 0.4 | 1 | 1 |
| Sikkim ... | 0.1 | 1 | — |
| Total ... | 38.1 | 26 | 43 |
| (B) Rajaputana Agency ... | 11.2 | 19 | 17 |
| Central India Agency ... | 6.4 | 16 | 14 |
| Western India and Gujarat States Agen- cies etc. ... | 4.6 | 13 | 12 |
| Deccan States and Kol- hapur Agency ... | 2.3 | 6 | 5 |
| Punjab States Agency and Tehri-Garhwal ... | 5.1 | 11 | 11 |
| Bengal and Assam States ... | 1.4 | 2 | 3 |
| Madras States Group (Pudukkottai, Banga- napalli and Sandur) ... | 0.5 | 1 | 1 |
| Eastern States Agency- Bihar and Orissa States (14 States), and Central Provin- ces States (9 States). | 6.3 | 6 | 14 |
| (C) Non-salute states, not provided for above ... | 2.8 | 4 | 5 |
| Total ... | 78.8 | 104 | 125 |

(3) The following is an illustrative list which brings out clearly the methods of apportionment followed with regard to the representation of individual states in the two Houses :—

| Name of the state | Status | Population in thousands | No. of seats in the Council of State | No. of seats in the Federal Assembly |
|--------------------|---------|----------------------------|---|---|
| (a) Udaipur ... | 19 guns | 1,567 | 2 | 2 |
| Indore ... | 19 „ | 1,325 | 2 | 2 |
| Jaipur ... | 17 „ | 2,632 | 2 | 3 |
| Jodhpur ... | 17 „ | 2,126 | 2 | 2 |
| Patiala ... | 17 „ | 1,626 | 2 | 2 |
| Rewa ... | 17 „ | 1,587 | 2 | 2 |
| (b) Mayurbhanj ... | 9 „ | 890 | $\frac{1}{2}$ | 1 |
| Kalahandi ... | 9 „ | 514 | $\frac{1}{2}$ | 1 |
| Bhopal ... | 19 „ | 730 | 2 | 1 |
| Kalat ... | 19 „ | 342 | 2 | 1 |
| Bikanir ... | 17 „ | 936 | 2 | 1 |
| Kotah ... | 17 „ | 686 | 1 | 1 |
| Bharatpur ... | 17 „ | 487 | 1 | 1 |
| Tonk ... | 17 „ | 317 | 1 | 1 |
| Alwar ... | 15 „ | 750 | 1 | 1 |
| Rampur ... | 15 „ | 465 | 1 | 1 |
| Khairpur ... | 15 „ | 227 | 1 | 1 |
| Junagadh ... | 13 „ | 545 | 1 | 1 |
| Bhavanagar ... | 13 „ | 500 | 1 | 1 |
| Nawanagar ... | 13 „ | 409 | 1 | 1 |
| Nabha ... | 13 „ | 287 | 1 | 1 |
| Manipur ... | 11 „ | 446 | $\frac{1}{2}$ | 1 |

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